

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Hearing

February 9, 2012

Jefferson City, Missouri

Volume 3

In The Matter Of The Application Of)
 Union Electric Company For Authority) File No.
 To Continue The Transfer Of Functional) EO-2011-0128
 Control Of Its Transmission System To)
 The Midwest Independent Transmission)
 System Operator, Inc.)

MORRIS L. WOODRUFF, Presiding
 CHIEF REGULATORY LAW JUDGE

KEVIN D. GUNN, Chairman

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1 PROCEEDINGS

2 JUDGE WOODRUFF: Welcome everyone, we're here
3 today for hearing in Case Number EO-2011-0128, which concerns
4 The Application of Union Electric Company doing business as
5 Ameren Missouri to Continue the Transfer of Functional
6 Control of Its Transmission System to the Midwest Independent
7 Transmission System Operator, Incorporated.

8 We'll start the day off by taking entries of
9 appearance leading with Ameren Missouri.

10 MR. LOWERY: Thank you, Your Honor. Appearing
11 on behalf of Ameren Missouri, James B. Lowery and Michael R.
12 Tripp with the law firm Smith Lewis, LLP, 111 South Ninth
13 Street, Suite 200, Columbia, Missouri 65201.

14 JUDGE WOODRUFF: Thank you. And for Staff?

15 MS. McCLOWRY: Meghan McClowry and Steve
16 Dottheim for the Staff of Public Service Commission, P.O. Box
17 360, Jefferson City, Missouri 65102.

18 JUDGE WOODRUFF: Okay. And for Public
19 Counsel?

20 MR. MILLS: On behalf of the Office of Public
21 Counsel and the Public, my name is Lewis Mills, my address is
22 Post Office Box 2230, Jefferson City, Missouri 65102.

23 JUDGE WOODRUFF: For Empire?

24 MR. COOPER: Dean Cooper, from the law firm of
25 Brydon, Swearngen & England, P.C., P.O. Box 456, Jefferson

1 City, Missouri 65102 appearing on behalf of the Empire
2 District Electric Company.

3 JUDGE WOODRUFF: Thank you. For MJMEUC.

4 MR. HEALY: Doug Healy, Law Firm of Healy &
5 Healy, 939 Boonville, Suite A, Springfield, Missouri 65802.

6 JUDGE WOODRUFF: Thank you. For Midwest ISO?

7 MR. ZOBRIST: Karl Zobrist, SNR Denton US,
8 LLP, 4520 Main Street, Suite 100, Kansas City, Missouri.

9 JUDGE WOODRUFF: Thank you. For MIEC?

10 MS. ILES: Your Honor, I'm on behalf of MIEC,
11 Carole Iles of the law firm of Bryan Cave, LLP, 221 Bolivar
12 Street, Jefferson City, Missouri 65010 [sic].

13 JUDGE WOODRUFF: Okay. On behalf of SPP.

14 MR. LINTON: On behalf of Southwest Power
15 Pool, David C. Linton, 424 Summer Top Lane, Fenton, Missouri
16 63026. And I have with me Erin E. Cullum, 415 North
17 McKinley, Little Rock, Arkansas 72205.

18 JUDGE WOODRUFF: Thank you. And I believe
19 that's all the parties. I haven't missed anyone, have I?

20 All right. What we'll do is we'll start with
21 opening statements. After we've heard the opening
22 statements, then we'll take a few moments off to mark
23 exhibits. And then we'll get started with the hearing. So
24 for opening statements, we'll begin with Ameren Missouri.

25 MR. LOWERY: Good morning, may it please the

1 Commission. In this case, Ameren Missouri seeks the
2 Commission's permission to continue its MISO participation
3 for an additional approximately four years. By that time,
4 Ameren Missouri will have participated in the MISO for
5 approximately 12 years.

6 In more precise legal terms, what this case
7 involves is a request to transfer functional control of
8 Ameren Missouri's transmission system under Section
9 393.190.1. For simplicity sake, I'm just going to refer to
10 this so-called transfer as MISO participation in my remarks
11 this morning.

12 The evidence will show that the terms and
13 conditions on which Ameren Missouri proposes to continue its
14 participation are very similar to the terms and conditions
15 upon which the company has participated for the last
16 approximately eight years. Those terms are reflected in the
17 non-unanimous stipulation and agreement that's been reached
18 among the Staff, the Company, MIEC, and the MISO itself.

19 Because OPC and MJMEUC both timely objected to
20 the stipulation, as you know, it becomes a position of the
21 signatory parties. What that means is the signatory parties
22 contend and agree that participation on the terms and
23 conditions reflected in the stipulation by the Company
24 satisfies the not detrimental to the public interest standard
25 that governs this Commission's decision under 393.190.1.

1 The evidence in this case will indeed reflect
2 that at least throughout the period for which the extended
3 permission is sought, that continued participation by Ameren
4 Missouri, that it's really beyond question that that
5 continued participation is extremely beneficial for customers
6 by a wide margin than if Ameren Missouri were not to continue
7 its participation.

8 So what are the terms and conditions of the
9 proposed continued permission? First, as was the case in all
10 of the prior MISO dockets for the Company -- and I think
11 there have been three of them -- the stipulation reflects
12 that the permission to continue participation would be on a,
13 quote, interim and conditional basis. The term would extend
14 to May 31, 2016, so about four years from now.

15 That end date could be extended if as a result
16 of the next MISO docket involving the Company's participation
17 -- and I'll talk about that in a minute -- the decision was
18 that the Company had to reestablish functional control and
19 operate as an independent coordinator of transmission or
20 transfer control to another RTO. And that extension beyond
21 May, 2016 would only be for so long as is necessary to
22 practically accomplish that reestablishment or that
23 additional transfer. That's the interim part of the
24 permission, and that's covered by Section 9 of the
25 stipulation.

1 That brings me to the conditional part of the
2 terms, and I'm going to discuss a few of those now. First,
3 Section 10(b) requires Ameren Missouri to file another case
4 by November 15, 2015. So in about three and a half years, we
5 will be back here initiating another case respecting further
6 participation beyond that 2016 date.

7 Second, Section 10(b) of the stipulation also
8 requires Ameren Missouri to file the results of a new cost
9 benefit study when it files that November, 2015 case.

10 Third, before November of 2015, Ameren
11 Missouri must do exactly what the evidence will show it did
12 before this case. It must tell the stakeholders what it
13 intends for the cost benefit analysis to consist of, and then
14 there will be a process, just like the process we've
15 essentially filed in two cases in a row, where we get their
16 substantive input and we would contemplate -- because this
17 has happened in every case in the past -- where we come to a
18 consensus as exactly what that study is supposed to look
19 like, what it's supposed to study, who the consult would be,
20 those kinds of things. And that too is covered by Section
21 10(b).

22 To be clear, the cost benefit study that we
23 will be doing for that next case will not be a, quote, update
24 of an earlier study which was the case for this particular
25 case. What we did hear, and all of the parties agree this

1 was appropriate, we updated a 2007-2008 Charles River
2 Associates full-blown, full-model study of the costs and
3 benefits of MISO participation, but everybody agrees for this
4 next case that we will essentially go back and do what I
5 would call a full-blown study again, sort of start over with
6 another robust study to file this that case.

7 Now, what do I mean by "full-blown study?"
8 What I mean by that is essentially reflected in the
9 surrebuttal testimony of Ameren Missouri witness Ajay Arora.
10 As he testifies, Ameren Missouri proposes to perform a study
11 similar to that Charles River Associates study, but as the
12 stipulation says, instead of studying about a three- or
13 four-year period, the study will look forward at least five
14 years and up to ten years into the future, which several of
15 the parties suggested that that's something we need to do and
16 we agreed with that. And so whether it be five years, seven
17 years, ten years, that's something we would discuss with
18 stakeholders and would go forward with the process, but it
19 would be at least five and perhaps as long as ten.

20 I also want to be clear that as Mr. Arora
21 testifies, the study will examine the impact on MISO
22 participation of MISO's -- what you've probably heard
23 variously called the resource adequacy construct, the
24 capacity market, modularly you've probably perhaps heard
25 those terms. Generically, they're all the same thing, but it

1 will include a study of that construct as it exists at the
2 time and as it might be reasonably proposed or expected to
3 change during the study period, so it will include that.

4 It will study the Southwest Power Pool as an
5 alternative to MISO participation, including accounting for
6 what we think by then will have been a year of SPP Day-Two
7 market operation. And that's one of the reasons we've timed
8 the timing of the next case and the time of the permission
9 and study when we did because we wanted to have that actual
10 SPP market experience. We wouldn't be able to do it if we
11 didn't extend of the period that we're talking about.

12 It will then study what's then known about
13 Entergy's proposed or could be completed entry into the MISO
14 by that time. It will study other general market conditions
15 and it's going to study things like regional transmission
16 planning and cost allocation principles, particularly in
17 light of FERC Order 1000, which I believe you're all at least
18 a little bit familiar with that came out last summer.

19 I would also note that when the first
20 full-blown study was done and updated for this case, I think
21 I mentioned this, there was an agreement essentially of --
22 about the parameters, the design, and all those kinds of
23 things. There's really been only very minimal disagreement
24 about study results in these cases for that matter, and we
25 don't have any reason to believe that things will be any

1 different in the future.

2 Fourth condition I want to talk about is not a
3 condition that was previously in any of the prior Commission
4 Orders or stipulations that have -- that have been entered
5 into regarding the Company's participation. And that is we
6 agree and signatories agree that it's appropriate for the
7 Commission to provide in its Order that a condition that if a
8 material event occurs after this docket is over, that -- of
9 such a magnitude that continued participation has become
10 detrimental, that anybody -- any party to this case can
11 petition the Commission or the Commission could do this on
12 its own motion, to essentially reopen a docket, to say we
13 need to look at this -- we need to look at this participation
14 before November of 2015. Several of the parties expressed
15 the idea that that is a provision that should be in your
16 Order and we've agreed that that's appropriate.

17 Now, there's two other conditions in the
18 stipulation that also have not been in prior stipulations,
19 and both of those deal with issues that others have raised
20 about the potential impact of Ameren Transmission Company,
21 and I'll refer to them as ATX, or one of their subsidiaries,
22 if they were to build regionally beneficial transmission
23 projects in Missouri. And those conditions appear in Section
24 10(i) and 10(j) of the stipulation.

25 Simply stated, Section 10(i) exists so that

1 those that may have questions, concerns, issues about these
2 ATX-related issues that they've raised, will have an
3 efficient mechanism and a forum to access information from
4 ATX, and again I want to be clear, when I say ATX, I mean ATX
5 or one of its subsidiaries. I don't strictly mean to limit
6 it to that one entity, necessarily, that they might otherwise
7 not have available to them, and to address issues involving
8 ATX that might not otherwise be capable of being addressed at
9 this Commission.

10 But, to do so in what we believe to be an
11 appropriate forum rather than in this case, which the Company
12 has always believed was inappropriate. Now, why is that?
13 Why does the Company believe that these so-called ATX issues
14 are not appropriate for this case? The question before you
15 is: Does participation on the terms, conditions proposed, is
16 that detrimental to the public interest over the -- over
17 extended permission period?

18 The question isn't whether UE should build
19 certain transmission or not build certain transmission over
20 the next four or five years or whether ATX should or
21 shouldn't. The question is whether the participation in MISO
22 is detrimental to the public interest. And we think the
23 evidence is very clear that not only is it not detrimental,
24 it's wildly beneficial.

25 The evidence in this case shows that even if

1 one were to accept OPC's unproven premise that if ATX were to
2 build a line in Missouri, a regional line in Missouri, that
3 Ameren Missouri's rates could be higher than if Ameren
4 Missouri built it. Even if you accepted that premise, which
5 we don't, but even if you accepted it, the evidence will show
6 that whatever that impact would be, would be so immaterial,
7 particularly if you're looking at what we're looking at here,
8 MISO participation for the next few years, that it would
9 barely impact the overwhelming benefits of MISO
10 participation.

11 It certainly comes nowhere close to turning
12 that participation into a detriment to the public interest.
13 In fact, Ms. Borkowski's supplemental rebut -- surrebuttal
14 testimony demonstrates that with regard to the Mark Twain
15 project, which I think you're familiar with from some agenda
16 presentations and otherwise, it's the line from Ottumwa down
17 to near Adair and over to Palmyra, and we call the Missouri
18 part of that the Mark Twain project.

19 What her testimony demonstrates is that during
20 the extended permission period at issue here, through the
21 2016 date, the planned investment in Missouri is only about
22 \$11 million. And keep in mind when you run through the
23 revenue requirement formulas under Attachment O of the MISO,
24 Ameren Missouri only bears 10 percent or less of the revenue
25 requirement impact of that, even that small amount of the

1 money, the \$11 million. So truly any hypothetical impact
2 would be lost in the rounding.

3 And even if you account for the present value
4 of the total revenue requirement over the entire period of
5 construction of life of the entire line, which we expect to
6 be a \$200 million investment, even if you accounted for that,
7 through 2060, the present value impact in this hypothetical
8 situation where there's a greater impact if ATX were to build
9 the line, is only \$1.6 million. That creates barely a ripple
10 against the more than \$100 million of benefit for MISO
11 participation over the next three years.

12 On top of that, another condition in the
13 stipulation that I mentioned in 10(j), continued
14 participation on the stipulation to the terms means that that
15 condition will prevent any incremental impact, if there were
16 any, from ATX building such a line in Missouri during the
17 period of extended permission.

18 The foregoing demonstrates that OPC's
19 continued objection to the stipulation provides no basis to
20 impose any additional conditions on Ameren Missouri's
21 continued MISO participation, and I would submit respectfully
22 that the Commission doesn't have lawful query to even do so
23 on that record.

24 The only other objecting party to the
25 stipulation is MJMEUC. The evidence will show that MJMEUC --

1 primarily, and OPC, essentially I guess supports them in
2 these concerns -- doesn't particularly like the MISO's
3 resource adequacy construct. And I think that they would
4 like it if it were to evolve into something else that they
5 speculate it might involve into 10 or 20 years down the road,
6 that they would like it even less.

7 They express fear that some day the
8 self-schedule and opt-out provisions in the -- I'll call it
9 the RACT, the resource adequacy construct tariff that MISO
10 has filed and that the FERC is considering, if some day those
11 went away, that they might incur higher costs.

12 I would point out that that's not what's been
13 proposed and there's -- there's no evidence that, in fact,
14 those provisions would go away. In fact, there's evidence
15 and there will be evidence in this record, that either the
16 self-schedule or the opt-out provision, you don't need both,
17 either of those will protect both Ameren Missouri's interest
18 and MJMEUC's interest.

19 I would note here that no one has testified
20 that these things are likely to happen, that they're going to
21 happen. They only say they could or they might happen if
22 certain things happen in the future. And I would submit that
23 all of these contentions are speculative.

24 I would also note that with respect to MJMEUC,
25 I question whether this Commission in a 393.190.1 case, or

1 perhaps any other case, has the authority to condition or
2 deny a Missouri public utility's right to transfer its
3 property because wholesale customers taking strictly
4 FERC-jurisdictional transmission service from the MISO have
5 an issue with strictly FERC-jurisdictional capacity market.
6 That's a consideration of FERC. I would submit that the
7 forum where MJMEUC ought to be raising these concerns is at
8 the FERC and not here.

9 In any event, what are the facts as opposed to
10 the speculation about this so-called RACT? The facts about
11 which the testimony is not indefinite, it's not equivocal,
12 are that Ameren Missouri is today and will be for years well
13 beyond 2016, the period of permission we're talking about,
14 long capacity.

15 Now, what's that mean? Well, the evidence is
16 pretty clear that there's really no expectation that this
17 capacity market's going to lower power prices, or excuse me,
18 lower capacity prices. In fact, the expectation is that it's
19 probably not going to impact them very much, and if anything
20 it might raise them. Well, if it raises long capacity, and
21 Ameren Missouri is long capacity, it's pretty easy to see
22 that Ameren Missouri's going to realize more revenue. And
23 through the fuel adjustment clause, that revenue's going to
24 go back to Missouri customers.

25 The facts are that MISO has proposed both the

1 self-schedule and opt-out, and even if it didn't, because of
2 the capacity situation Ameren Missouri's in, Ameren
3 Missouri's customers wouldn't be harmed.

4 The evidence is that OPC's concerns, for
5 example, are really in the long-term, 10 to 20 years down the
6 road. Well, that has nothing to do with this docket, because
7 this docket and the permission sought here will be over way
8 before we get to 10 to 20 years down the road. And even if
9 all the speculation could some day become true, the testimony
10 in the case reflects that what MJMEUC really wants is an
11 ability to come back to the Commission and say these horrible
12 things have happened and the MISO got rid of the
13 self-schedule or the opt-out or the FERC didn't approve it,
14 Commission you ought to open a docket and you ought to
15 examine whether or not that creates a situation where the
16 participation by Ameren Missouri has become detrimental, and
17 we've agreed to such a provision. So I would submit that
18 these issues really have no business in this case.

19 The only other issue of note that I've not
20 touched upon comes from OPC witness Ryan Kind. Mr. Kind
21 claims that Ameren Missouri should have its own personnel
22 apart from the Ameren Services personnel, experienced
23 personnel who for the last eight years have been acting as
24 representative of Ameren Missouri at the MISO and engaging on
25 the 25 or 30 stakeholder groups and committees that exist at

1 the MISO, that Ameren Missouri ought to have its own
2 employees, essentially add FTE, and have only those employees
3 go there and where an Ameren Missouri had only and ignore any
4 other considerations.

5 He speculates that without this, Ameren
6 Missouri's interests are being subordinated to a different,
7 quote, Ameren interest somehow. The implication being that
8 Ameren Missouri has been or will be hurt. The evidence will
9 show that he can't point to a single instance where this has
10 occurred.

11 The evidence will show that Ms. Borkowski, who
12 has responsibility for all the transmission-related
13 interactions with the MISO, has never seen a situation where
14 a vote at the MISO would have -- cast by Ameren Services,
15 would have been different if somehow you only took, quote,
16 Ameren Missouri's interests account. Mr. Jaime Haro, who
17 will testify today and who is in charge of all of Ameren
18 Missouri's interactions with the market aspects of the MISO
19 participation, says the same thing.

20 And they both testify it would require
21 additional FTE, it would be inefficient, and it's unnecessary
22 and there's no evidence that it is necessary. If there was
23 ever a solution in search of a problem, this particular issue
24 is it.

25 So where will the record that will be made

1 here today and tomorrow leave us? It will show that the
2 benefits of continued participation are overwhelming. It
3 will show that a full-blown robust cost benefit study will be
4 done in about three and a half years. It will show that if
5 something material does happen before then, the Commission
6 can and presumably would.

7 It will show that parties will get the
8 information and answers they've been looking for, and the
9 Commission for that matter, regarding plans for transmission
10 in Missouri via the investigatory docket that the Company,
11 Staff, MIEC and MISO all agree is a good idea. It will show
12 that MISO's RACT proposal will not harm Ameren Missouri
13 customers throughout the period of extended permission, and I
14 would submit and you'll hear testimony about this, for years
15 after that as well. But for purposes of this case, we're
16 really interested in the extended permission period.

17 The record will be devoid of any evidence
18 other than that dreamed up in Mr. Kind's mind to support the
19 condition that Ameren Missouri's representation at the MISO
20 has been or is or will be inappropriate or that it has harmed
21 Ameren Missouri's customers. On that record, there is simply
22 no basis to conclude that Ameren Missouri's continued
23 participation in the MISO on the terms and conditions
24 outlined in the stipulation would be detrimental to the
25 public interest.

1 The law says that a utility has a right to
2 transfer its property unless, in fact, it is detrimental to
3 the public interest to do so. The purpose of that provision
4 is to insure adequate service -- continuation of adequate
5 service to the public. There's no threat at all based on the
6 proposed transfer on these terms.

7 The law also instructs that the Commission
8 can't find a detriment unless there's compelling evidence
9 that the transfer is likely to be detrimental. Not that it
10 speculatively might be detrimental, but that it's likely to
11 be detrimental. And finally, any such detriment must be
12 direct and present. It can't be future, it can't be
13 indirect, it can't be speculative.

14 I would submit, then, based on that record, in
15 view of those principles that the Commission's duty here is
16 clear, and that is to approve the participation on the terms
17 reflected in the stipulation.

18 I appreciate your patience and your attention,
19 and we look forward to presenting the case to you.

20 JUDGE WOODRUFF: Thank you. Opening for
21 Staff?

22 COMMISSIONER KENNEY: Wait, wait, wait.

23 MR. LOWERY: You have some questions for me?

24 COMMISSIONER KENNEY: I want to find out who's
25 going to -- good morning.

1 MR. LOWERY: Good morning.

2 COMMISSIONER KENNEY: And thank you. I want
3 to ask a few questions about who's going to testify about
4 some of the issues that I want to know.

5 MR. LOWERY: Sure.

6 COMMISSIONER KENNEY: And you might be able to
7 answer them. Who will be able to testify -- can you hear me?

8 MR. LOWERY: Yeah, it's on, it's just not very
9 loud.

10 COMMISSIONER KENNEY: Who's going to be able
11 to testify about who the specific market participant is? And
12 I mean between Ameren Missouri, Ameren Illinois, Ameren
13 Services, ATX, who can testify about the relationship between
14 the four companies?

15 MR. LOWERY: I think probably any -- probably
16 any of the company's witnesses can generally testify about
17 that. I mean, in terms of the market participant, Mr. Haro.
18 I mean, the market participant is the trading function and
19 the energy and ancillary services, capacity markets, that
20 would be Mr. Haro's responsibility.

21 COMMISSIONER KENNEY: And is he -- well, let
22 me ask this threshold question: Who -- who is making the
23 application to transfer -- continue transferring functional
24 control of its Assets to THE Midwest ISO?

25 MR. LOWERY: Ameren Missouri is.

1 COMMISSIONER KENNEY: Ameren Missouri. Okay.

2 And who does Mr. Haro work for?

3 MR. LOWERY: Ameren Missouri.

4 COMMISSIONER KENNEY: All right. And who does
5 Dennis Kramer [phonetic] work for?

6 MR. LOWERY: He works for Ameren Services
7 Company.

8 COMMISSIONER KENNEY: Is he testifying?

9 MR. LOWERY: He is not. He works for
10 Ms. Borkowski and she is testifying.

11 COMMISSIONER KENNEY: She is testifying. But
12 she works for ATX?

13 MR. LOWERY: She is an officer of ATX, but she
14 is also Senior Vice-President of Ameren Services Company, has
15 been with Ameren Services Company for a number of years, and
16 her function with Ameren Services Company is to provide
17 services to the Ameren subsidiaries that own transmission and
18 essentially operate, maintain, construct, that transmission
19 -- those transmission assets on behalf of those companies.
20 But those companies own those assets.

21 COMMISSIONER KENNEY: Okay. You've made a
22 reference to the capacity market and the resource adequacy
23 construct and that because of the fact that Ameren is long on
24 capacity, there's really no reason to be concerned about it
25 and that capacity prices are probably going to go up because

1 of the capacity market?

2 MR. LOWERY: Mr. Haro testifies that he
3 doesn't really have any reason to believe, and I don't think
4 they're -- I suppose somebody could testify contrary, nobody
5 has so far, that there would really be much of an impact, but
6 if anything, there would be upward pressure, not downward
7 pressure, I believe would be his testimony. And Mr. Arora
8 would be the -- if I said Mr. Haro, I meant to say Mr. Arora.
9 Mr. Arora would be the best person to ask about that.

10 COMMISSIONER KENNEY: You made reference to
11 the fact that the evidence supports that the self-scheduling
12 and the opt-out provisions of the capacity market will remain
13 in effect, or at least there's no evidence that they will go
14 away?

15 MR. LOWERY: There's no evidence that they
16 will go away, and I also mentioned, Commissioner, that
17 because of Ameren Missouri's long position, I don't believe
18 it really makes any difference from Ameren Missouri's
19 perspective, although Ameren Missouri does support those
20 provisions.

21 COMMISSIONER KENNEY: Who can testify about
22 the provisions of the resource adequacy construct and whether
23 the self-schedule and the opt-out would remain? Would that
24 be a MISO witness?

25 MR. LOWERY: I think they would have

1 information about that. I think Mr. Arora can testify to the
2 extent, you know, I mean, obviously no one can predict with
3 certainty what the FERC might or might not do in the future,
4 but I think Mr. Arora probably is our witness that -- that
5 can testify most cogently about the capacity market issues.

6 COMMISSIONER KENNEY: So the distinction
7 between whether something is not detrimental or whether
8 something is affirmatively beneficial, do you draw a
9 distinction between those two standards?

10 MR. LOWERY: Well, I'm not entirely sure if I
11 understand your question.

12 COMMISSIONER KENNEY: Let me repeat it, forget
13 that question then.

14 The standard that we have to look at is
15 whether continued participation in MISO is detrimental to the
16 public interest, right?

17 MR. LOWERY: That's right.

18 COMMISSIONER KENNEY: And if it's not, then
19 you should be allowed to continue to participate?

20 MR. LOWERY: That's correct.

21 COMMISSIONER KENNEY: And being not
22 detrimental is not the same as being affirmatively
23 beneficial?

24 MR. LOWERY: I think the case law is very
25 clear about that, yes.

1 COMMISSIONER KENNEY: Okay. Well, okay. So
2 there's case law that you think is very clear in -- in
3 drawing that distinction between not being detrimental and
4 being affirmatively beneficial?

5 MR. LOWERY: I believe so, and we discussed
6 that in some detail in our position statement, and of course
7 we will address that further in briefing to the extent we
8 need to. But we do discuss that in -- we do discuss what we
9 believe the Court's have had to say about 393.190.1, and what
10 the Commission's rights and obligations are and what the
11 utility's rights and obligations are with respect to
12 disposing of its property. And in effect, arguably, this is
13 a disposition because there's transfer of, quote, functional
14 control. That's why we're here.

15 COMMISSIONER KENNEY: Okay. All right. I
16 think that's all the questions I have. Thank you.

17 JUDGE WOODRUFF: Chairman?

18 CHAIRMAN GUNN: I just have a couple in
19 addition to that. The materiality provision, ultimately,
20 that would be, in your view, anyone can petition that they
21 believe it's a material change, but ultimately, the
22 Commission would make the determination that it (a) was
23 material enough to -- to open up a docket and then (b) what
24 subsequent consequences happen because of the materiality of
25 the change?

1 MR. LOWERY: I agree with that. We -- what we
2 tried to do is we tried to say it needed to be material and a
3 significant risk that it has become detrimental because if
4 you just say "could" or "may," you know, we could be in here
5 every three months because one little thing happens. And so
6 we tried to put some -- I guess I would couch it as guidance
7 for the Commission, but I mean at the end of the day,
8 Commissioner, I think it's going to be up to a discretion of
9 the majority of the Commissioners to say is that provision
10 triggered or not. I think it would be difficult for a party
11 to say, oh, it's not really triggered. I think I agree with
12 you.

13 CHAIRMAN GUNN: All right. And then I want to
14 -- I want to flush out your argument about this Ameren
15 Services versus Ameren a little bit, just to clarify. So the
16 idea is that in the past, there's been no daylight between
17 the positions of Ameren Services and Ameren Missouri, and
18 that you've had all this experience on MISO and there is no
19 expectation that that is going to change going into the
20 future. So there is no reason to impose that condition?

21 MR. LOWERY: I don't think there's any
22 evidence to support such a condition, yes. No reason to.
23 However you want to say it. I think they both mean the same
24 thing.

25 The other thing that I would point out that,

1 Commissioner, that I didn't mention in my opening statement,
2 the -- the way the MISO transmission owners' agreement is set
3 up and the way the stakeholder governance is set up at the
4 MISO, and these are things that, of course, are subject to --
5 they have to be approved by all of the participants, and
6 there are many of them. And in fact, in the case of the TOA,
7 it would require unanimity to change it. The way it's set up
8 and has been for some time, is that when you have multiple
9 subsidiaries of one holding company that are either
10 transmission owners or market participants or both, and
11 Ameren Missouri is both, and there are two others for Ameren
12 as subsidiaries, there's Ameren Illinois company, which is --
13 that's the old CIPS, CILCO IP that's now one company.

14 CHAIRMAN GUNN: Right.

15 MR. LOWERY: And then you have Ameren
16 Transmission Company of Illinois, which is the Illinois
17 subsidiary. It's actually a subsidiary of Ameren Corporation
18 at this time, but it essentially is an ATX entity that's
19 doing regional transmission in Illinois. When you have that
20 construct, what MISO says, and TOA, for example, is a
21 FERC-approved agreement, so FERC says is: I don't care if
22 you have three subsidiaries or nine subsidiaries, you get one
23 vote. Ameren Missouri doesn't have its own vote. You can
24 have a condition such as Mr. Kind is proposing, it's not
25 going to change -- it's not going to change what happens at

1 the MISO. Ameren Missouri can't go there and say I have my
2 own vote. It can't -- it's -- it's not allowed under the
3 MISO governance.

4 But aside from that fact, there's no evidence
5 that there's an issue here, and there is evidence that we're
6 going to have to -- you have to add FTE, you're going to have
7 to engage in a process that we're going to spend more money
8 and we're not going to get any benefit.

9 CHAIRMAN GUNN: Are all of the subsidiaries
10 signatories to the agreement, signatories to the agreement?

11 MR. LOWERY: The three I mentioned are parties
12 to the TOA, because they're transmission owners.

13 CHAIRMAN GUNN: Okay.

14 MR. LOWERY: Ameren Missouri and probably
15 Ameren Illinois -- well, I should say I don't know. Ameren
16 Missouri is also what's called a market participant in the
17 markets. And I think you're -- I can tell by your
18 recognition, I think you can understand the distinction I'm
19 drawing. And then Ameren Energy Resources, which doesn't own
20 any transmission, is strictly a market participant, and you
21 know what -- I mean, Ameren Energy Resources is the
22 unregulated generating company that's owned by Ameren
23 Corporation, and they're a market participant in the energy
24 -- well, probably in energy capacity and ancillary services
25 markets. Not -- they don't have a transmission role, but

1 they -- they do have a role as a buyer and seller of power,
2 to oversimplify it.

3 CHAIRMAN GUNN: Totally separate concept, I'm
4 moving on now.

5 MR. LOWERY: Okay.

6 CHAIRMAN GUNN: So if -- if Ameren Missouri
7 were to transfer transmission assets to ATX in Missouri, what
8 would be the mechanism that we would -- that it would come
9 before us? Would it be a prudency review in a rate case, or
10 would it at the time approving the transfer?

11 MR. LOWERY: First of all, there's no plan or
12 contemplation to do that.

13 CHAIRMAN GUNN: And I'm not saying there is.

14 MR. LOWERY: But -- but if there were a
15 proposal to do that, we would have to be back here in a
16 393.190.1 asking your permission to do that.

17 CHAIRMAN GUNN: All right. Thank you. I
18 don't have anything else.

19 MR. LOWERY: Thank you.

20 JUDGE WOODRUFF: Commissioner Jarrett.

21 MR. LOWERY: Oh, I'm sorry.

22 COMMISSIONER JARRETT: No questions. Thank
23 you, Mr. Lowery.

24 JUDGE WOODRUFF: Opening for Staff.

25 MR. DOTTHEIM: May it please the Commission,

1 I'm Steve Dottheim, I'll deliver the opening for the Staff.

2 On September 14th, 2011, the Staff filed
3 rebuttal testimony of Adam C. McKinnie, among other things
4 proposing that the Commission authorize Union Electric
5 Company d/b/a Ameren Missouri to continue to participate in
6 the Midwest Independent Transmission System Operator, the
7 Midwest ISO, based upon certain conditions.

8 On November 17th, the Staff, Ameren Missouri,
9 the Midwest ISO, and the Missouri Industrial Energy Consumers
10 -- MIEC -- filed a non-unanimous stipulation and agreement.
11 On November 18th, 2011, Mr. McKinnie filed second
12 supplemental rebuttal testimony and testimony in support of
13 the non-unanimous stipulation and agreement.

14 The testimony that Mr. McKinnie filed supports
15 the non-unanimous stipulation and agreement, and Ameren
16 Missouri's continued participation in the Midwest ISO as not
17 detrimental to the public interest pursuant to the terms and
18 conditions of the non-unanimous stipulation and agreement.

19 The Office of Public Counsel and the Missouri
20 Joint Municipal Electric Utility Commission filed objections
21 to the non-unanimous stipulation and agreement. Ultimately,
22 the Commission scheduled the hearings for today and tomorrow.

23 On January 18th, 2012, Mr. Kind of the Office
24 of Public Counsel filed supplemental rebuttal testimony and
25 on February 6th, 2012, this week, Mr. McKinnie filed

1 surrebuttal testimony in response to the supplemental
2 rebuttal testimony of Mr. Kind.

3 As the Commissioners are aware, Rule 4 CSR
4 240-240.115 (d) make the non-unanimous stipulation and
5 agreement a change of positions of the signatory parties.
6 The basis for that Commission's rule is State, ex rel.
7 Fischer v. Public Service Commission, 645 S.W.2d.
8 Mo.App. Western District court, 1982.

9 It is significant that as in prior cases,
10 Ameren Missouri, as part of the non-unanimous stipulation and
11 agreement, must return to the Commission for further
12 authorization to continue to participate in the Midwest ISO
13 or any other RTO or ISO. Ameren Missouri must return to the
14 Commission in 2015.

15 The Staff believes that -- that the resolution
16 that it is supporting is not detrimental to the public
17 interest in part for what is not before the Commission at
18 this time. It is the Staff's counsel office department's
19 legal opinion that Ameren Missouri affiliates, including
20 Ameren Transmission Company, ATX, and its affiliates, needs a
21 Certificate of Convenience and Necessity as set out in
22 particular in Section 393.170 to construct, own, and operate
23 certain transmission facilities in Missouri. Section
24 393.170.3 provides that the Commission, quote, may by its
25 Order impose such condition or conditions as it may deem

1 reasonable and necessary, close quote.

2 The Commission -- Commissioners are familiar,
3 as they will recall in a different Ameren Missouri proceeding
4 in November -- excuse me -- or December of last year
5 involving Ameren Missouri's seeking authority regarding the
6 refinement of -- of coal in EO-2012-0146, the question of
7 whether the Commission can render what might be characterized
8 as declaratory judgments or advisory opinions.

9 The Commission itself has cited the, maybe
10 seminole case on that matter, State Tax Commission v.
11 Administrative Hearing Commission, 641 S.W.2d 69 (Mo. Banc
12 1982). The Commission cited that case in -- in the matter of
13 MO Gas Pipeline, File Number GC-2011-0138, and adopted that
14 position. The Staff's original position as filed on
15 September 14th was based upon seeking that the Commission
16 make the determination in this proceeding that ATX or any
17 Ameren affiliate that would seek to construct transmission
18 would need a CCN from this Commission.

19 And it is the Staff's belief that that,
20 although not set out in the list of issues that have been
21 filed with the Commission, is implicit within the positions
22 or one of the positions being advocated by the -- the Office
23 of the -- of the Public Counsel.

24 The Staff's decision to enter into a
25 non-unanimous stipulation and agreement also was effected by

1 its further review and study of FERC Order Number 1000, and
2 its effect impact on the federal right of first refusal. I
3 think it is probably fairly safe to say that the dust has yet
4 to settle regarding FERC Order Number 1000 regarding either
5 an understanding of that document as originally drafted and
6 issued in July of last year, and as regards what legal
7 challenges may be pending now or -- or in the -- the future.
8 But the Staff's continuing review and participation at the
9 Midwest ISO and Southwest Power Pool was another factor in
10 the Staff's change in positions.

11 Mr. Lowery has gone through various of the
12 subsections 10(a), 10(i), 10(j) in some detail. I won't
13 replicate his -- his comments. I would note for the
14 Commission that the Staff in the surrebuttal testimony of
15 Mr. McKinnie Attempted to be thorough in addressing the
16 matters of FERC Order 1000 and matters as far as without
17 getting in too much of the legal discussion, but indicating
18 some of the -- of views of the Office of the Staff counsel's
19 department regarding the necessity of a transmission company
20 requiring a CCN. And again, the Staff counsel's office
21 believes that that issue is -- is not literally pending
22 before the Commission at this time.

23 In closing, I would note that the
24 Commissioners are probably aware -- undoubtedly aware, that
25 they have opened up a number of new dockets involving the

1 other electric utilities under their jurisdiction respecting
2 their continuation to participate in the Southwest Power
3 Pool. There's File Number EO-2012-0135 respecting Kansas
4 City Power & Light, File Number EO-2012-0136 respecting KCP&L
5 Greater Missouri Operations, and File Number EO-2012-0269
6 involving the Empire District Electric Company. So the Great
7 Plains Energy, Inc. is, of course, a public utility holding
8 company, and Kansas City Power & Light and KCP&L GMO are
9 subsidiaries. The Empire District Electric Company is
10 differently structured, but the Commissioners may be dealing
11 with similar issues in the very near future in other dockets.

12 Thank you.

13 JUDGE WOODRUFF: Thank you. Questions?
14 Commissioner Kenney?

15 COMMISSIONER KENNEY: Yes. I lost my train of
16 thought.

17 What was the significance of that last point
18 you made about the other dockets we're dealing with?

19 MR. DOTTHEIM: The significance of -- of that,
20 for example, the Office of Public Counsel -- well, there are
21 various terms in the pending non-unanimous stipulation and
22 agreement and the Office of Public Counsel has raised issues,
23 for example, regarding the FERC incentives in Order 679.
24 Those may be -- those may be issues in those cases.

25 In fact, Commissioner, in response to your

1 question, those -- those -- those have been issues in prior,
2 for example, Kansas City Power & Light and -- and Aquila, and
3 Empire cases. So I -- I just raise that as -- to alert the
4 Commissioners so as -- excuse me, I don't know, I haven't
5 received a -- I don't know, maybe Commissioner, you're
6 objecting on relevancy.

7 COMMISSIONER KENNEY: I'm not objecting. I'm
8 just asking what's the point. But let me ask another
9 question.

10 MR. DOTTHEIM: But that's the point and --

11 COMMISSIONER KENNEY: I was wondering why you
12 were telling me that.

13 MR. DOTTHEIM: -- and Great Plains Energy, to
14 my knowledge, has not formed any transmission companies, but
15 they are a public utility holding company. I am not aware, I
16 don't know that the Staff is aware of Great Plains Energy
17 having plans of -- of forming any transmission companies.
18 That might be something of interest in the -- in the pending
19 KCP&L and GMO files, cases that the Commission has -- has
20 recently opened.

21 COMMISSIONER KENNEY: Okay. Let me just --
22 let me move on.

23 So ATX -- are you -- are you asserting that
24 it's appropriate in this docket or not? Because I wasn't
25 clear.

1 MR. DOTTHEIM: I'm sorry?

2 COMMISSIONER KENNEY: Is it appropriate in
3 this docket to require ATX to come in and get a CCN in this
4 case?

5 MR. DOTTHEIM: No, no.

6 COMMISSIONER KENNEY: Okay. All right. And
7 are you satisfied with the paragraph J -- 10(j)? Do you know
8 the paragraph 10(j) I'm talking about, the rate treatment for
9 any -- any Ameren affiliate?

10 MR. DOTTHEIM: Yes --

11 COMMISSIONER KENNEY: Does that --

12 MR. DOTTHEIM: -- the Staff supports the --
13 the stipulation and agreement.

14 COMMISSIONER KENNEY: But specifically 10(j),
15 does it provide protection in terms of our ability to deduct
16 any FERC incentives that the affiliate would receive for
17 purposes of setting retail rates? Is that the purpose and
18 function of paragraph 10(j)?

19 MR. DOTTHEIM: Yes. If you go -- if you go to
20 order -- if you go to Order 679.

21 COMMISSIONER KENNEY: Uh-huh.

22 MR. DOTTHEIM: There are other FERC
23 incentives. I do not know -- one of them is abandoned
24 facilities. I have no idea -- maybe I should, but I have no
25 idea whether there's any prospect of -- of that item

1 occurring. Another one is pre-commercial operation costs,
2 which are, for example, studies and what -- and what have
3 you.

4 COMMISSIONER KENNEY: So 10(j) is limited to
5 CWIP and the difference between FERC-authorized ROE and
6 Missouri PSC-authorized ROE and capital structure?

7 MR. DOTTHEIM: Yes.

8 COMMISSIONER KENNEY: Why not put those other
9 FERC-authorized incentives into that paragraph (j)?

10 MR. DOTTHEIM: Commissioner, when you're
11 involved in negotiations, you don't necessarily -- I don't
12 know that you ever get everything you might want. It's --

13 COMMISSIONER KENNEY: Was that something Staff
14 wanted?

15 MR. DOTTHEIM: It's -- that is not something
16 that we discussed.

17 COMMISSIONER KENNEY: Okay.

18 MR. DOTTHEIM: I'm -- now, others -- and I can
19 only -- I can only speak on -- on behalf of Staff, and others
20 might think that by using different terms, that they
21 discussed it. But I don't believe that the Staff discussed
22 the other -- the other items.

23 COMMISSIONER KENNEY: Okay.

24 MR. DOTTHEIM: And the -- the origin of the
25 non-unanimous stipulation and agreement were negotiations.

1 And we got a result that we thought was good. We thought it
2 was not detrimental to the public interest as a typical
3 stipulation and agreement. There's a provision that we will
4 defend the non-unanimous or the unanimous, if it happens to
5 be unanimous, stipulation and agreement. And that is what --
6 what we are going to do.

7 COMMISSIONER KENNEY: Okay.

8 MR. DOTTHEIM: Regardless of what Public
9 Counsel may propose, the Staff will defend the stipulation
10 and agreement is not detrimental to the -- to the public
11 interest.

12 COMMISSIONER KENNEY: Gotcha. Thank you.

13 JUDGE WOODRUFF: Thank you. We'll move to
14 Public Counsel.

15 MR. MILLS: Good morning, may it please the
16 Commission.

17 This case is about finding the appropriate
18 balance between Ameren Missouri's ability to transfer its
19 property and the public's interest in receiving service at
20 just and reasonable rates, not just today but for the
21 long-term.

22 So even though the ultimate question in this
23 case is whether the Commission should allow Ameren Missouri
24 to transfer functional control to the MISO, there are many
25 preliminary questions that have to do with the safeguards and

1 the conditions that the Commission should impose upon any
2 such transfer.

3 The cases are clear that the Commission does
4 have authority to impose conditions to protect the public
5 interest. The Commission does not have to give unconditional
6 approval to oppose transfer that appears to have no detriment
7 to the public interest. The Commission can and should impose
8 conditions necessary to protect and enhance the public
9 interest.

10 Previous cases that gave Ameren Missouri and
11 its predecessor names authority to -- I'm sorry -- authority
12 to participate in the MISO imposed a number of conditions
13 designed to protect and enhance the public interest and the
14 previous cases all settled. However, there have been a
15 number of significant changes since the last agreement in
16 2008, so the old conditions are no longer adequate.

17 Even the signatories to the non-unanimous
18 stipulation and agreement recognize this and the stipulation
19 and agreement incorporates what I consider to be some
20 perfunctory new conditions that are apparently intended to
21 address some of these significant changes.

22 Now, the most important of these changes are
23 the formation of ATX to build most of the major new
24 transmission projects in Missouri and Illinois, and the
25 increasingly diverse interests of Ameren Subsidiaries in the

1 operation and development of ISO functions, including
2 capacity markets and capacity planning and transmission
3 planning.

4 Because of these changes, there need to be new
5 conditions placed on Ameren Missouri's participation in the
6 MISO just to keep Missouri ratepayers from losing protections
7 that they have enjoyed in the past. In particular, the old
8 arrangement through the service agreement that preserved the
9 PSC's ability to set the transmission component of bundled
10 retail rates is no longer effective since Ameren created ATX
11 and charged ATX with constructing major new transmission
12 projects.

13 Before ATX and before Order 1000, paragraph
14 5.3 of the service agreement and FERC's approval of the
15 service agreement explicitly gave the Missouri PSC
16 jurisdiction over the transmission component of bundled
17 retail rates.

18 And I think it's funny because that's such an
19 awkward phrase, an in utility regulation, we do acronyms for
20 everything. But even though we've stumbled over that phrase
21 for years, nobody has come up with an acronym for the
22 transmission component of bundled retailed rates.
23 Nonetheless, we'll be talking about that a lot in the case,
24 maybe we'll come up with one in this case.

25 But the formation of ATX allows Ameren to

1 essentially do an end-run around the service agreement, and
2 the reason this case has dragged on for so long is primarily
3 the inability of the parties to agree on an adequate and
4 workable substitute for the protections that used to be
5 afforded by paragraph 5.3 of the service agreement.

6 The parties to the non-unanimous stipulation
7 and agreement have settled on a short-term Band-Aid-type fix
8 for this issue, but Public Counsel does not believe that the
9 fix is anywhere near an adequate substitute for the
10 protections that were afforded in the past by the service
11 agreement. Public Counsel instead recommends to the -- the
12 condition it proposed in response to issue number three in
13 the list of issues in this case.

14 Now, there may be other ways to solve this
15 issue. For example, you could require the provision in the
16 non-unanimous stipulation and agreement that's designed to
17 expire at the end of this interim approval to -- to extend
18 indefinitely. But OPC's proposal is, as I've said, is set
19 forth in the -- its statements of position.

20 Now, the other area in which the significant
21 changes I think require new -- new conditions on the transfer
22 or the extension of the participation of MISO is the way in
23 which Ameren Services represents all the Ameren subsidiaries
24 at MISO. As markets and transmission planning and capacity
25 planning become more complex, the interests of a vertically

1 integrated IOU like Ameren Missouri simply won't always align
2 with its divested sister companies in Illinois or necessarily
3 with the parent company.

4 Ameren, as the parent company, will seek
5 maximum profits as it is obligated to do on behalf of its
6 shareholders as a publicly traded-for company. There's no
7 way today to foresee all the conditions in which Ameren
8 Missouri's interests and the interests of its customers may
9 be different from the interests of its sister companies. The
10 best way to protect the public interest from possible harm is
11 to require Ameren Missouri to participate in MISO directly
12 with its own representatives.

13 As Mr. Kind pointed out in his testimony, the
14 Arkansas Public Service Commission recently suggested or
15 imposed such a condition on Entergy Arkansas and the Missouri
16 Public Service Commission should do the same with Ameren
17 Missouri.

18 Now, you may hear some of the attorneys, maybe
19 even some of the witnesses in this case, try to create some
20 unnecessary confusion by pointing out that the Arkansas
21 Commission recently issued an Order in which it stated that
22 for purposes of appeal, the Order that Mr. Kind cites to is
23 not a final Order. And that certainly is the case. But,
24 it's also the case that the Arkansas PSC has neither
25 abandoned nor modified the conditions about separate

1 participation and the Missouri Public Service Commission
2 should require similar conditions in this case.

3 Now, I want to talk a little bit about some of
4 the items that have come up in earlier opening statements and
5 the discussions with the Commission. In his opening
6 statement, Mr. Lowery gave a lot of details about what he
7 expects that the cost benefit analysis that this design to be
8 completed before the next interim period begins. Those
9 details are not in the non-unanimous stipulation and
10 agreement. So if the Commission believes that those details
11 are important, the Commission should order them to be part of
12 the next cost-benefit analysis. I certainly have no doubt
13 that Mr. Lowery and Ameren intend to do those at this time,
14 but there's no guarantee that when we get to the study three
15 years from now, that those particular details will actually
16 be in it. There's no requirement in the non-unanimous
17 stipulation that all of those things be done that way.

18 There also were some questions and some
19 discussion of paragraph 10(a) in the non-unanimous
20 stipulation and agreement, and that's the provision that has
21 to do with material changes. And I think the most
22 significant flaw in the way that that paragraph is drafted is
23 that it actually requires that significant harm must occur
24 before the Commission can investigate it. That would be a
25 much more useful -- at least from my perspective, much more

1 useful condition if it allowed parties to raise perspective
2 -- perspective possible changes for the Commission's
3 condition without actually waiting for material changes to
4 occur that cause a detriment.

5 Now, with respect to the -- the transmission
6 owners' agreement at MISO and the -- the provisions in that
7 agreement that require all of the subsidiaries of a holding
8 company to be represented as a single entity, certainly this
9 Commission, if it were concerned that -- that under the
10 present terms of the transmission owner agreements, that what
11 Public Counsel is suggesting could not happen, this
12 Commission could Order Ameren Missouri to make its best
13 efforts to participate as a stand-alone entity.

14 And I think once -- if you put Ameren Missouri
15 and the other Ameren holding companies in the position of
16 lobbying and making its best efforts to implement that
17 change, along with the Entergy Arkansas entities and the
18 other Entergy entities in the same position because of the
19 Arkansas Order, those two voices at MISO are going to be
20 extremely loud and difficult to ignore, if they're both
21 asking to participate at the -- at the IOU level rather than
22 the holding company level.

23 There were some questions about the
24 investigatory docket, and the ability to get information from
25 Ameren transmission in that docket. I think there are a

1 couple of threshold questions about that. One is whether or
2 not ATX is even a party to the non-unanimous stipulation and
3 agreement. It is not listed as a signatory, although on the
4 signature lines it appears that though at least one of the
5 signatories for Ameren Missouri also appears to be
6 representing ATX. But ATX is not a party to case, so I don't
7 know whether or not it is effectively a party to that
8 agreement.

9 And moreover, I don't know whether a
10 non-unanimous stipulation and agreement that has been
11 objected to is any longer a binding agreement. I don't think
12 it is, I don't think it will be approved by the Commission in
13 its current form. So I don't know that any of those
14 stipulations are going to be binding on ATX.

15 So in summary, the non-unanimous stipulation
16 and agreement does not adequately protect the public
17 interest. In order to adequately protect the public
18 interest, the Commission should adopt the conditions
19 described by Public Counsel witness Kind and in the statement
20 of position filed by the Office of the Public Counsel.

21 Thank you, and I'll be happy to answer
22 questions.

23 JUDGE WOODRUFF: Questions?

24 COMMISSIONER KENNEY: You can go first.

25 CHAIRMAN GUNN: Yeah, I was a little bit

1 confused. You said that the Arkansas Order "suggests" and
2 then you said "imposed." So I want to be clear as to what
3 the Arkansas Order did. Did it actually impose the condition
4 or did it suggest?

5 MR. MILLS: It required those conditions, but
6 then there is the later Order that says that it's not a final
7 Order. So there may be some doubt there about that. But the
8 Order itself does say, yes, you shall do this.

9 CHAIRMAN GUNN: Okay. So the -- other than it
10 not being final for purposes of appeal, it actually did
11 impose the condition?

12 MR. MILLS: Correct.

13 CHAIRMAN GUNN: I want to ask you a question
14 about your significant harm argument. It seems that -- I
15 mean, significant harm don't appear in (a). It says material
16 change that -- material event that it presents a substantial
17 risk that continued participation --

18 MR. MILLS: Becomes detrimental.

19 CHAIRMAN GUNN: -- becomes detrimental.

20 MR. MILLS: Yes.

21 CHAIRMAN GUNN: But you're reading that as
22 significant harm that has already taken place?

23 MR. MILLS: No, I think the material change,
24 the material event has to take place before this provision is
25 triggered. I think the provision is too limited in two ways:

1 One, that it requires a material event to have taken place,
2 and two, that it is only triggered if someone can argue that
3 that -- that that material event creates a detriment rather
4 than significant harm. I think -- I think the Commission
5 should allow the parties to open a new case to look at
6 continued participation if there's a threat of something
7 happening, not actually have happen, that there's a threat of
8 something happening, that does create significant harm. I
9 don't think the threshold should be a showing that the
10 participation is detrimental but that there is a threat of a
11 significant change that could cause significant harm.

12 CHAIRMAN GUNN: All right. So -- but
13 ultimately, you -- that would be our -- that's our
14 interpretation. You would request and it would be our
15 interpretation regardless of really what the -- what the
16 Order said. I mean, if we decided to open up a docket, we
17 could open up a docket.

18 MR. MILLS: Certainly, that's true.

19 CHAIRMAN GUNN: Would you consider a vote by
20 Ameren Services that goes against the interest of Ameren
21 Missouri to be a material event? Let me get to where I'm
22 going, and I'll let you answer the actual question that I
23 have.

24 Does the materiality provision in this, or if
25 we were to order it, because I agree, this is non-binding,

1 it's a joint statement. But if we had a materiality
2 provision, would that protect or would there be adequate
3 protections or could there be adequate protections that would
4 monitor votes by Ameren Services or positions taken by Ameren
5 Services that if they took a vote that was in substantial
6 opposition to the public interest of -- of Ameren -- or
7 ratepayers' public interest, that we would then be able to --
8 that that would trigger the material event provision that
9 would allow us to make the determination whether they should
10 continue to participate?

11 MR. MILLS: That -- you certainly could do
12 that. I think that's a suboptimal solution because one, that
13 would happen after the vote was taken, and whatever action
14 that the vote led to would apparently be put into place. And
15 second, the remedy there would be, I suppose, to, you know,
16 to either allow continued participation of the MISO or
17 require withdrawal from the MISO, which is a fairly drastic
18 remedy.

19 I think a much better solution would be to
20 require Ameren Missouri to have its own representation so
21 that you don't -- that situation doesn't arise with a holding
22 company as voting in a way contrary to Ameren Missouri's
23 interests.

24 CHAIRMAN GUNN: But under the terms imposed by
25 MISO, would that actually give Ameren Missouri the ability

1 under the agreement, would it actually give Ameren Missouri
2 the ability to participate like that? I mean, if they
3 require all the subsidiaries to have one vote, does it --
4 does it actually achieve what you're trying -- what you're
5 requesting to achieve? I mean, we could order it, but if it
6 --

7 MR. MILLS: I think that what -- what this
8 Commission would -- if I had my druthers of what this
9 Commission would do would be to order Ameren Missouri to seek
10 to participate in the MISO as a standalone entity.

11 CHAIRMAN GUNN: So --

12 MR. MILLS: I don't think you can order them
13 to make that happen because it may not happen.

14 CHAIRMAN GUNN: So the only condition you
15 would request that it be imposed is that Ameren Missouri make
16 its best efforts to become the representative in MISO?

17 MR. MILLS: Yes.

18 CHAIRMAN GUNN: Okay. Now totally switching
19 -- thank you for that. I'm going to switch subjects.

20 Do we -- and this is to ATX, do we currently
21 have, and I apologize, because I just don't know whether they
22 have Missouri jurisdictional issues. Do we have currently
23 any jurisdiction over ATX to the extent that they are not
24 building anything or having come to us to take over Ameren
25 Missouri's -- any of Ameren Missouri's assets?

1 MR. MILLS: I don't -- no, I don't think you
2 have any jurisdiction over ATX, and as far as I know, they're
3 not really doing any business in Missouri at this time.

4 CHAIRMAN GUNN: Then we would only gain
5 jurisdiction if they participated somehow in Missouri, first
6 of all; then secondly, if it effected current or future
7 assets -- I mean, theoretically, if they -- if we could get
8 to Ameren Missouri through a prudency review if they
9 transferred assets or if they -- if ATX was building
10 something in Missouri that Ameren Missouri should have
11 undertaken?

12 MR. MILLS: I'm not sure I follow that
13 question.

14 CHAIRMAN GUNN: I'm not sure I followed it
15 either. I guess I'm just trying to get to other things would
16 have to occur for us to gain jurisdiction over -- over ATX?

17 MR. MILLS: Exactly. I mean, right now, it's
18 -- as far as I know, ATX has not built anything in Missouri,
19 doesn't own anything in Missouri, is not providing service or
20 transmission service in Missouri at all. So there's nothing
21 that you have that would -- nothing that they're doing would
22 give you jurisdiction over what they're doing. And just
23 because they exist as a corporation doesn't automatically
24 give you jurisdiction over them. It's the actions that they
25 take that trigger your jurisdiction rather than their

1 existence.

2 CHAIRMAN GUNN: I think that's all the
3 questions I have right now. Thank you.

4 MR. MILLS: You're welcome.

5 JUDGE WOODRUFF: Commissioner Jarrett?

6 COMMISSIONER JARRETT: I don't have any
7 questions.

8 JUDGE WOODRUFF: Commissioner Kenney?

9 COMMISSIONER KENNEY: So if ATX undertakes to
10 build one of these MVP products that's in Ameren Missouri's
11 certificated service area, it's OPC's position -- I think
12 it's Staff's position as well -- that they would need to come
13 and seek a Certificate of Convenience and Necessity first.
14 And by that process, we would have jurisdiction over ATX at
15 that point.

16 MR. MILLS: Under current law, it's my
17 position that that is the case. I think the law could
18 change.

19 COMMISSIONER KENNEY: I think that was Staff's
20 concern and legal position, interpretation, too.

21 MR. MILLS: The law could change or we could
22 be wrong about that. I mean, ATX could argue and perhaps be
23 successful that transmission companies are not really the
24 kind of companies that this Public Service Commission
25 regulates.

1 COMMISSIONER KENNEY: So then let me go back
2 to the -- to your earlier discussion about Ameren Missouri
3 participating in MISO as a separate standalone entity. The
4 way the transmission owner's agreement is constructed now,
5 they can't do it, and they would have to go back and seek --
6 they'd have to file a new transmission owners' agreement at
7 FERC and all the transmission owners would have to agree with
8 that, and Ameren Missouri would have its own separate vote?

9 MR. MILLS: And I -- I don't know, but I don't
10 have any reason to doubt Mr. Lowery's representation that all
11 the TOs would have to agree to that.

12 COMMISSIONER KENNEY: Okay. Have you been
13 following the filing regarding the resource adequacy model,
14 the capacity market?

15 MR. MILLS: To a certain extent.

16 COMMISSIONER KENNEY: Do you have any opinion
17 about whether capacity markets are appropriate for vertically
18 integrated states?

19 MR. MILLS: I think there's some issues there,
20 but I'm not really sure that that is a driving issue in this
21 case.

22 COMMISSIONER KENNEY: Well, I guess if we're
23 calling for Ameren Missouri to participate as its own entity
24 because that is somehow -- well, I guess what I'm getting at
25 is what's the detriment to Ameren Missouri participating as

1 it's currently participating?

2 MR. MILLS: The detriment is that -- and that
3 certainly is one of the aspects where it could easily and
4 foreseeably arise, is that a vertically integrated company
5 will have different interests in -- in different capacity
6 market constructs. And so it's -- it's not necessarily the
7 case, but it's very likely the case that depending on how the
8 capacity construct evolves, that Ameren Missouri is a
9 vertically integrated company will have different ways in
10 developing that market.

11 COMMISSIONER KENNEY: Different from Ameren
12 Illinois, which is --

13 MR. MILLS: Right, exactly.

14 COMMISSIONER KENNEY: -- merchant generation
15 assets.

16 So is there an argument that that conflict
17 already exists? I mean, I guess what I'm saying is in voting
18 in favor of the current capacity market that MISO just filed,
19 are Ameren Missouri and Ameren Illinois's interests already
20 divergent?

21 MR. MILLS: Can I check one -- because I think
22 I may be answering something with information that's highly
23 confidential.

24 COMMISSIONER KENNEY: Oh, am I asking a
25 question I shouldn't ask?

1 MR. MILLS: No, but one second.

2 COMMISSIONER KENNEY: Trust you-guys to let me
3 know.

4 MR. MILLS: Okay. I can answer in open
5 session. Mr. Kind in his testimony has got reference to a
6 data request response from Ameren in this case that talks
7 about conflicts that do already exist.

8 COMMISSIONER KENNEY: Okay. Maybe I'm ask
9 Mr. Kind more about that.

10 MR. MILLS: And that's not highly
11 confidential, so.

12 COMMISSIONER KENNEY: All right. Thank you.

13 JUDGE WOODRUFF: Chairman Gunn?

14 CHAIRMAN GUNN: Yeah, I'm not exactly sure. I
15 guess FERC has opened up a docket to take a look at
16 incentive, disincentive, the way they've been putting
17 insensitive rates. Are you aware of that?

18 MR. MILLS: Yeah, but I'm not aware that it
19 has progressed to any extent. I know it's out there, but.

20 CHAIRMAN GUNN: It's out there and there are
21 at least two Commissioners, I think, that are interested in
22 -- in looking into it and potentially changing the way that
23 it did. And I'm just assuming that you -- if they did change
24 that, that could theoretically could become a material event
25 that would trigger a docket?

1 MR. MILLS: It could, certainly.

2 CHAIRMAN GUNN: Thanks.

3 COMMISSIONER KENNEY: Oh, yeah, I'm sorry.
4 Why isn't paragraph 10(j) sufficient to address the concerns
5 or why is paragraph 10(j) not sufficient in providing the
6 same protections that paragraph 5.3 provides in the service
7 agreement?

8 MR. MILLS: The only reason that Section 10(i)
9 is in there is because the Commission has or will lose
10 jurisdiction over the -- over the transmission component of
11 bundled retail rates. And this is simply Ameren Missouri
12 saying you don't have any jurisdiction, but we're voluntarily
13 giving up these revenues that we otherwise -- that otherwise
14 you as a Missouri Commission could not address.

15 Under 5.3 of the service agreement, you have
16 jurisdiction. You don't have to rely on Ameren Missouri
17 allowing you to do that. So I think that's an important
18 distinction. And the other part of that is that Ameren
19 Missouri's grant in paragraph 10(j) is for a very limited
20 amount of time and for a very limited amount of dollars. The
21 real money comes after this interim period.

22 COMMISSIONER KENNEY: And because it's
23 non-unanimous and it's just a position statement, in our
24 Report and Order, we could obviously strengthen that
25 language?

1 we otherwise might get involved in. I would imagine, I don't
2 know whether Mr. Zobrist for Midwest ISO would -- would weigh
3 in at that -- at that point as far as if there's any
4 suggestion that those FERC incentives would only be charged
5 -- excuse me, would only not be charged -- again, only not be
6 charged in the Missouri service tariff of Ameren Missouri,
7 whether that's a discrimination issue or what have you.

8 I think, though, there's -- there's another
9 question of, again, if this Commission were to assert
10 jurisdiction over a transmission company, whether it's --
11 whether it's an Ameren Corporation subsidiary or any
12 transmission company, what might be conditions that a
13 Missouri Commission might settle for that transmission
14 company in granting it a Certificate of Convenience and
15 Necessity.

16 COMMISSIONER KENNEY: Okay.

17 MR. MILLS: I don't know. Is there a question
18 pending?

19 COMMISSIONER KENNEY: No. There isn't. Thank
20 you.

21 JUDGE WOODRUFF: Thanks, Mr. Lewis. Go to
22 MIEC.

23 MR. LOWERY: Your Honor, while Ms. Iles comes
24 to the podium, could I just make one comment? And I
25 certainly don't want to get into a debate about what things

1 Mr. Mills and I do and don't agree on, because we certainly
2 don't agree on everything, but there's one thing I do feel
3 like needs to be corrected.

4 Mr. Mills said that the original Arkansas
5 Order imposed certain things and then this later Order
6 indicated they were guidance. The later Order is very clear
7 that the Arkansas Commission said that our first Order was
8 guidance. We didn't impose anything by our first Order, and
9 I think that's an important distinction. The Arkansas
10 Commission itself is saying, We never imposed anything.

11 COMMISSIONER KENNEY: You're talking about the
12 Arkansas Order Number 54 --

13 MR. LOWERY: That's correct.

14 COMMISSIONER KENNEY: -- as it's commonly
15 referred to?

16 MR. LOWERY: That's right.

17 COMMISSIONER KENNEY: But there was specific
18 -- very, very specifically delineated items that Arkansas
19 said it wanted to see, and it said it wasn't a final Order
20 because there's going to be some subsequent Order that's
21 coming. But to the extent that it's just guidance, it's just
22 guidance because there's another Order that's following it.
23 I mean, they were pretty definitive about what they wanted to
24 see in order to allow Entergy Arkansas to transfer functional
25 control of its assets to MISO. Would you agree with me on

1 that?

2 MR. LOWERY: I would agree that they gave
3 guidance about what they would like to see, yes.

4 COMMISSIONER KENNEY: And what they -- all
5 right. All right.

6 JUDGE WOODRUFF: Ms. Iles.

7 MS. ILES: Thank you. May it please the
8 Commission. Just very briefly, I'm here on behalf of the
9 Missouri Industrial Energy Consumers, and as Mr. Dottheim and
10 Mr. Lowery have already explained, we are a party to the
11 non-unanimous stipulation and agreement. And we agree with
12 the position that's stated in the -- in that document that
13 Ameren should have continued participation in MISO under the
14 terms and conditions set out in that document.

15 We will, in the course of this hearing today,
16 introduce the rebuttal testimony of James R. Dauphinais.
17 Mr. Dauphinais is present and he will be happy to answer the
18 questions of the Commission. He'll be available for
19 cross-examination.

20 So I really have nothing further unless there
21 are questions.

22 JUDGE WOODRUFF: Commissioner Jarrett?

23 COMMISSIONER JARRETT: Just a quick question.
24 Good morning, Ms. Iles.

25 MS. ILES: Good morning.

1 COMMISSIONER JARRETT: This is the first time
2 that MIEC and Ameren have ever been on the same side of a
3 case?

4 MR. ILES: I probably shouldn't bring this one
5 up but we were in agreement regarding Proposition C at the
6 circuit court, so this is the second time in recent history.

7 CHAIRMAN GUNN: Yeah, you shouldn't have
8 brought that up.

9 COMMISSIONER JARRETT: I don't have anything
10 else.

11 MS. ILES: Thank you.

12 MR. LOWERY: Yeah, I feel like I should be
13 honest with the Commission rather than trying to hide an
14 unpleasant fact.

15 JUDGE WOODRUFF: Thank you. Opening for
16 MJMEUC.

17 MR. HEALY: May it please the Commission. I'd
18 like to thank you for the opportunity to be here today.
19 June 1st, questions were filed by then commissioner Jeff
20 Davis. We intervened that afternoon when we saw the
21 questions and filed testimony and response to them.

22 And while we don't normally avail ourselves of
23 the jurisdiction of the PSC, when we do have the opportunity
24 to impart our opinion, we consider it to be an important
25 topic and we enjoy doing so and appreciate the opportunity to

1 do so.

2 So that being said, involuntary four capacity
3 markets, that is our concern in this docket. We think, in
4 your opinion, from our research, from discussion with our
5 experts, that these have been a disaster in PJM, they've been
6 a disaster in New England ISO, they have not had the promised
7 benefits, they've only increased costs in consumers.

8 As a non-profit utility, those costs would be
9 borne directly by our customers that we serve. So we do have
10 a concern here with the direction MISO is taking. I think
11 Mr. Wilson testifies, if you look at his testimony, he is
12 going to show that these markets increase costs, they
13 increase an element of volatility not currently in the
14 markets. These are not pluses, these are negatives. And for
15 the money that's being imparted, there is little to no
16 benefit coming back.

17 Mr. Vrbas is going to address some potential
18 concerns MJMEUC has with FERC and with the current existing
19 tariff. Now, as Ameren stated, the tariff has written this
20 in front of MISO -- or in front of FERC for approval. I
21 would be somewhat skeptical if the current tariff stays the
22 same for the next 10 to 20 years. I don't think anything at
23 MISO stays the same for 10 to 20 years. I'd be surprised if
24 it's even called MISO in 10 or 20 years.

25 But I do know that MISO's request by February

1 29th, this month, for a ruling from FERC on that tariff. I
2 think it will be important to see what FERC does with that
3 tariff. Over the last 18 months, they've modified other
4 capacity-market tariffs in matters that are not beneficial,
5 and MJMEUC would like to see how it treats this particular
6 tariff.

7 We do think the stipulation as proposed is a
8 good first step. We think it could be stronger, and we look
9 forward to presenting testimony here today and tomorrow on
10 that particular issue.

11 Thank you.

12 JUDGE WOODRUFF: Thank you. Questions?

13 COMMISSIONER GUNN: I don't have anything.

14 COMMISSIONER KENNEY: So is it -- thank you.

15 Is the existence of a capacity market in and of itself
16 sufficient reason to make a determination that participation
17 in MISO is detrimental?

18 MR. HEALY: There is currently a capacity
19 market in MISO. I think part of our concern is the current
20 capacity market seems to be working. There's no short falls
21 of capacity that anybody's been able to point to in MISO.
22 FERC has directed MISO to make corrections to its existing
23 tariff, and Orders issued just here in the last month on the
24 PRM tariff. We see no reason by the tariff as proposed by
25 MISO right now has been submitted.

1 But to address your question directly --

2 COMMISSIONER JARRETT: Right.

3 MR. HEALY: -- do we have the dollar figures
4 in front of us to say this is such an egregious mistake that
5 we should continue in MISO? No, we do not. I think part of
6 that is going to really depend on what FERC does with opt-out
7 and self-supplying, as well as minimum offer price rules.
8 Those have all been modified dramatically in PJM and MISO,
9 and those modifications are made here, it could have a very
10 large monetary figure attached to it.

11 COMMISSIONER JARRETT: But as it stands today,
12 and FERC not having even approved the proposed capacity
13 construct or research adequacy construct, is there any --
14 would that be basis -- would that be a basis by itself to
15 make a determination that it's detrimental to the public
16 interest?

17 MR. HEALY: I don't believe so, no.

18 COMMISSIONER JARRETT: All right. Thank you.

19 JUDGE WOODRUFF: Thank you, sir.

20 Then opening for Empire?

21 MR. COOPER: Thank you. I do represent the
22 Empire District Electric Company, which serves over 146,000
23 electric customers in southwest Missouri. Empire has
24 previously obtained the Commission's authority to transfer
25 conditional and interim control of certain of its

1 transmission assets to the Southwest Power Pool RTO.

2 Empire has an interest in this case as a
3 transmission seam exists between the SPP, RTO, and the
4 Midwest ISO RTO that impacts Empire's ability to sell and
5 import power. Ameren Missouri's continued membership in MISO
6 will perpetuate that seam, and may indirectly create the
7 possibility of another significant seam with MISO to the
8 south.

9 This is because it has been announced that
10 Entergy Arkansas as well as the other Entergy operating
11 companies intend to join MISO. The physical connection that
12 is to be used for Entergy Arkansas to join MISO is provided
13 by a single interconnection with Ameren Missouri and
14 Associated Electric Cooperative. So if Ameren Missouri were
15 to no longer be a member of MISO, MISO would no longer have a
16 physical interconnection with Entergy Arkansas, and energy
17 would be required to make our transmission arrangements.

18 Now, as Mr. Lowery has mentioned previously,
19 the non-unanimous stipulation and agreement, which represents
20 the joint position of Ameren MISO -- or Ameren Missouri,
21 Staff, MIEC and MISO includes a requirement that Ameren's
22 analysis of future continuation of MISO participation include
23 a study that at a minimum examines continued MISO
24 participation versus participation in the SPP.

25 Ameren Missouri has further indicated in its

1 supplemental statement of position that the cost benefit
2 analysis it is agreeing to in the non-unanimous stipulation
3 includes the impact of Entergy joining or proposing to join
4 the Midwest ISO as those efforts may stand as of the time of
5 the next study.

6 Having considered this proposed breadth of
7 future analysis, as well as Empire's ability as a stakeholder
8 under the proposed terms or proposed conditions in that
9 non-unanimous stipulation, Empire does not oppose the
10 positions taken in the non-unanimous stipulation and
11 agreement, and will offer no testimony in this hearing.

12 JUDGE WOODRUFF: Questions? I just wanted to
13 clarify your last remarks so it's clear. And you had sent
14 around an e-mail yesterday also that Mr. Warren and
15 Mr. Nickel would not be taking the stand.

16 MR. COOPER: That's correct, Your Honor, yes.

17 JUDGE WOODRUFF: Okay. Thank you.

18 All right. Then for SPP?

19 MR. LINTON: Southwest Power Pool has no
20 opening statement. Thank you.

21 JUDGE WOODRUFF: Then for Midwest ISO?

22 MR. ZOBRIST: May it please the Commission.
23 Karl Zobrist on behalf of Midwest ISO, MISO, and I hope it's
24 called that in ten years because it's taken us enough of a
25 transition to move from Midwest ISO to MISO these days.

1 And with me in the hearing room is Richard
2 Doying, vice-president of operations. We will be offering
3 his testimony in support of the non-unanimous stipulation and
4 agreement, but also address -- addressing some of the issues
5 that MJMEUC has raised with regard to capacity markets.

6 MISO supports the non-unanimous stipulation
7 and agreement. The benefits that Mr. Arora discusses in
8 particular are substantial. Mr. Doying, although he did not
9 address these particular benefits in his testimony, is here
10 to respond to those. The evidence that has been presented by
11 Ameren shows that there are a range of benefits that MISO
12 provides in the ranges of the billions to all of its
13 membership and in the range of about a hundred million to
14 Ameren particular.

15 These range from improved reliability to
16 MISO's energy markets, the commitment to dispatch process,
17 which is represented not only by the day-ahead and the
18 realtime market, but the ancillary services market which
19 permits regulated public utilities like Ameren Missouri to
20 reduce their reserve margins.

21 MISO provides other benefits with regard to
22 wind integration, generation investment deferral, and a host
23 of other improvements that benefit not only customers in
24 Missouri and the customers of Ameren Missouri but actually
25 customers in this entire part of the region. Beyond that,

1 there are qualitative benefits in terms of the transparency
2 of price and other market information. They provide benefits
3 in terms of seams, management with other regional entities,
4 including PJM Interconnection, Tennessee Valley Authority,
5 Southwest Power Pool, and the Independent Electric System of
6 Ontario. So this is very regional in its scope, and it also
7 provides, of course, coordinated transmission planning.

8 The benefits that have been noted by Ameren's
9 witness, in particular Mr. Arora and Ms. Borkowski, plainly
10 passed the Commission's public interest test as set forth in
11 the Commission's decision in past years. And to the extent
12 that there are certain stakeholders in Missouri that do raise
13 some concerns, I would, you know, recall the Commission's
14 decision in the KCP&L Greater Missouri Operations CCN case
15 for South Harper when we came back to the Commission after a
16 whole lot of litigation that we don't particularly want to
17 discuss in detail here, and as for you to grant a CCN.

18 And the Commission made very clear that this
19 is a balancing process with the rights of individuals or
20 individual groups being subservient to the rights of the
21 public in general. The objections that have been raised by
22 the Office of the Public Counsel and MJMEUC are not strictly
23 relevant to Ameren's request and the points that are covered
24 in the stipulation.

25 OPC wants apparently to have a different role

1 for Ameren Missouri versus other affiliates of Ameren
2 Services. And to the extent that this is an attempt to
3 effect MISO's governance, I believe that the Commission
4 should tread carefully. The MISO governance system was
5 carefully constructed over ten years ago to balance the
6 interests of transmission owners with other utilities who may
7 not be fully integrated as well as with independent power
8 producers, with environmental groups, with other public
9 interest groups, and with public advocates like OPC.

10 And any changes in MISO's governance should be
11 addressed in a wide forum, not only involving the stakeholder
12 process at MISO, but with other regional authorities, perhaps
13 with the Entergy RSC folks, and of course federal officials.
14 And I do agree with what Mr. Lowery said about the Arkansas
15 Order. It did provide, Commissioner Kenney, some specific
16 details, but upon reconsideration, they said these are our
17 concerns and we are providing guidance.

18 And I think that the Commission needs to
19 recall that many of the issues Entergy faces and the
20 stakeholders down there face is a result of the gulf states
21 issues that have been affecting that area for 20, 30 years.
22 And I don't think we have those issues particularly in this
23 docket when we're talking about Ameren Missouri seeking
24 permission to continue its membership in MISO.

25 MJMEUC raises hypothetical and what-if

1 questions mainly related to capacity markets as they operate
2 in PJM and other portions of the East Coast. That is not the
3 MISO proposal. The MISO resource adequacy construct does
4 propose a capacity market. It is not a three-year forward
5 capacity market like PJM. It is at most a one-year to
6 14-month capacity market.

7 There's also a specific ability to opt out of
8 the capacity market, there is the ability to sell schedule
9 transactions, and there is the ability for Ameren Missouri to
10 continue to be subject to this Commission's integrated
11 resource planning process as set forth in the Commission's
12 regulations.

13 So all total, we believe that there are
14 overwhelming public benefits. And clearly it is not
15 detrimental to the public interest, which is a lower standard
16 than having to affirmatively show that it is in the public
17 interest. However, MISO believes that even if the higher
18 standard is addressed in this situation, that the proposal by
19 Ameren Missouri and the contents of the non-unanimous
20 stipulation and agreement fulfill that public interest test.

21 Thank you.

22 JUDGE WOODRUFF: Questions? Commissioner
23 Kenney?

24 COMMISSIONER KENNEY: Thank you, Mr. Zobrist.
25 I just have a couple of questions. Will Mr. Doying be able

1 to testify about MISO's Form 990, which was provided in
2 response to the Staff Data Request 61?

3 MR. ZOBRIST: That's a good question. I think
4 he is familiar in general with the Form 990. I may be able
5 to respond to some questions as well.

6 COMMISSIONER KENNEY: I have a specific
7 question about -- well, I can't find it. One of the items
8 that's listed as a vendor that got paid over a hundred
9 thousand dollars was Potomac Economics for market research.

10 MR. ZOBRIST: Right.

11 COMMISSIONER KENNEY: What was that?

12 MR. ZOBRIST: Potomac Economics is --

13 COMMISSIONER KENNEY: No, what was the market
14 research? Potomac Economics is the independent market
15 monitor, right?

16 MR. ZOBRIST: Right.

17 COMMISSIONER KENNEY: I know what they are.
18 What was the market research that was being done?

19 MR. ZOBRIST: I'm not sure that I can answer
20 that question. I know that, you know, most of the IMM's
21 budget, which is several million dollars, is devoted to his
22 market monitoring and market mitigation efforts.

23 COMMISSIONER KENNEY: Right.

24 MR. ZOBRIST: He is on occasion asked to do
25 some other particular projects, and if Mr. Doying doesn't

1 know what that is, and he may -- very well may know what it
2 is, but we can provide that to you.

3 COMMISSIONER KENNEY: Because as I'm reading
4 it, this is a separate line item, it's part seven, it's the
5 compensation of the five highest paid contractors, so my
6 question is: Is this -- this isn't highly confidential, it's
7 a public document, right?

8 MR. ZOBRIST: Well, I assume it's in the IMM,
9 the nature of the specific project may be, but certainly the
10 amount is not.

11 COMMISSIONER KENNEY: So the amount that he's
12 paid for market research, is that a separate contract apart
13 from his independent market monitoring?

14 MR. ZOBRIST: It's broken out as a separate
15 item. I mean, I know just because we went through the
16 budget, I believe that the market monitor -- can I just ask
17 Mr. Doying a question?

18 COMMISSIONER KENNEY: Sure.

19 MR. ZOBRIST: I know that the IMM's budget for
20 next year is between \$2.5 and 3 million. And this must have
21 been -- if it's a separate item, it must have been a project
22 that he was asked to do on an issue that would not relate to
23 his -- well, I shouldn't go any further, but it would be a
24 special project, Commissioner.

25 COMMISSIONER KENNEY: Separate and apart from

1 his independent market monitoring duties?

2 MR. ZOBRIST: Correct.

3 COMMISSIONER KENNEY: Pursuant to a separate
4 contract?

5 MR. ZOBRIST: I believe so.

6 COMMISSIONER KENNEY: All right. I'll
7 probably have more questions about that, then. And I guess
8 the reason I have questions about it is the independent
9 market monitor's duties are specific, and they're
10 FERC-delineated, and they're supposed to be completely
11 independent from the ISO. And so I would have questions
12 about what this other project was that he's doing that's
13 separate and apart --

14 MR. ZOBRIST: And we'd be glad to provide
15 that. And of course he does interface with FERC and they
16 understand what other projects that he does. But we'd be
17 glad to provide more detail on that.

18 COMMISSIONER KENNEY: Okay. And then my last
19 question is, and maybe Mr. Lowery might want to answer this,
20 too.

21 Can we condition Ameren's continued
22 participation on Ameren taking advantage of the opt-out and
23 self-scheduling proposals that are in the resource adequacy
24 construct? Can we require them that they take advantage of
25 those self-scheduling and the opt-out, in your opinion?

1 MR. ZOBRIST: I don't know. I prefer if you
2 ask that to Mr. Lowery. We offer those as an option to all
3 of the transmission owners, and --

4 COMMISSIONER KENNEY: What do you think?

5 MR. LOWERY: I'm going to give you an I don't
6 know because I haven't thought about it at this point, but I
7 -- I will point out, in all candor, that I believe in general
8 that the law is that you are not authorized to impose
9 conditions in a transfer case unless the condition is
10 necessary to prevent the overall transaction from being
11 detrimental to the public interest.

12 COMMISSIONER KENNEY: Right.

13 MR. LOWERY: I don't think that you have the
14 authority to sort of change the deal, so to speak, unless to
15 prevent the overall deal from being detrimental, you need to
16 condition it. And then so -- and I cannot imagine given what
17 I think my witness' testimony will be regarding about the
18 capacity construct, that the self-schedule or opt-out
19 certainly during the period of permission, whether they're
20 there or not, I don't think that's detrimental to Ameren, so
21 I don't think there's a detriment to address. That's a long
22 way of saying I don't really think -- I think the answer is
23 probably no to your question.

24 COMMISSIONER KENNEY: But if hypothetically,
25 then, we made a specific finding that -- that a resource

1 adequacy construct as it's being considered at FERC now,
2 without the self-scheduling and opt-out provisions is
3 detrimental, then we could impose such a condition?

4 MR. LOWERY: If that made the transfer of
5 functional control detrimental, if it costs Ameren \$50, let's
6 say, I don't think that's a detriment to the public interest
7 that allows you to impose a condition. I do think it's a
8 moot point here because of Ameren's long position and where
9 Ameren is during this period that I don't think it makes any
10 difference. And I think you'd have to have -- whatever
11 finding you have to have, you have to have evidence --
12 substantial and competent evidence, of course that supports a
13 finding as well, and I think that would be lacking.

14 COMMISSIONER KENNEY: All right. That helps,
15 thank you.

16 JUDGE WOODRUFF: Thank you, Mr. Zobrist.

17 All right. I believe that concludes all of
18 the opening statements. In a moment, we'll go off the record
19 to mark exhibits. When we're done marking exhibits, then
20 we'll take a break. We'll actually resume with taking
21 testimony at 10:30. We're off the record.

22 (Exhibit Numbers 1 through 17 were marked for
23 identification.)

24 (A break was held.)

25 JUDGE WOODRUFF: All right. We're back from

1 break and we're ready to get started with the first witness,
2 Ajay Arora.

3 MR. LOWERY: Ameren calls Ajay Arora to the
4 stand, please.

5 (The witness was sworn.)

6 JUDGE WOODRUFF: Thank you. You may inquire.

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. LOWERY:

9 Q. Would you please state your name for the
10 record?

11 A. Ajay Arora.

12 Q. Mr. Arora, did you cause to be prepared for
13 filing in this docket three pieces of testimony that has been
14 marked as Exhibits 1, 2, and 3 respectively; direct,
15 surrebuttal, and supplemental surrebuttal testimony?

16 A. I did.

17 Q. If I were to ask you the same questions that
18 are posed in those three testimonies, would your answers
19 today be the same?

20 A. Yes, they would.

21 Q. Do you have any changes or corrections that
22 need to be noted?

23 A. I do not.

24 MR. LOWERY: With that, Your Honor, I offer
25 the admission of Exhibits 1, 2, and 3.

1 JUDGE WOODRUFF: Exhibit 1 which is direct;
2 2, which is surrebuttal; and 3, which is supplemental
3 surrebuttal have been offered. Any objections to their
4 receipt? Hearing none, they will be received.

5 (Exhibit Numbers 1 through 3 were received
6 into the record by Judge Woodruff.)

7 JUDGE WOODRUFF: For cross-examination, we
8 begin with MISO.

9 MR. ZOBRIST: No questions.

10 JUDGE WOODRUFF: Staff?

11 MS. McCLOWRY: No questions.

12 JUDGE WOODRUFF: MIEC?

13 MS. ILES: No questions.

14 JUDGE WOODRUFF: SPP?

15 MR. LINTON: No questions.

16 JUDGE WOODRUFF: Empire?

17 MR. COOPER: No questions.

18 JUDGE WOODRUFF: MJMEUC?

19 MR. HEALY: Just a couple, Your Honor.

20 JUDGE WOODRUFF: All right.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. HEALY:

23 Q. Mr. Arora, how are you doing today, sir?

24 A. Pretty good, thank you.

25 Q. I have just a few questions I'd like to review

1 in your testimony.

2 A. Okay.

3 Q. Do you have your testimony in front of you?

4 A. I do.

5 Q. Now, in your testimony, you talked about some
6 of the updates and changes you made to the Charles Rivers
7 Associate study that was done prior; is that correct?

8 A. That's correct.

9 Q. Okay. And there's been quite a few changes in
10 MISO since 2008 to current. Would you agree with that?

11 A. I agree that there have been some changes,
12 yes.

13 Q. Okay. ASM market now?

14 A. Correct.

15 Q. Been changes to RSG?

16 A. There have been some changes to RSG, correct.

17 Q. A capacity market?

18 A. Capacity market has been proposed and filed
19 for, correct.

20 Q. And there's also a current capacity market; is
21 that correct?

22 A. That's correct.

23 Q. Okay. But your testimony, just so I'm clear,
24 is that with the updates you made, the CRA study is still
25 sufficient to show benefits to continue in MISO; is that

1 correct?

2 A. My testimony is really based on the update to
3 the methodology that was used in the CRS study. The analysis
4 was actually conducted in-house --

5 Q. Okay.

6 A. -- under the same methodology and accounting
7 for the changes that we just talked about in the MISO market.

8 Q. That analysis market was done in-house; is
9 that correct?

10 A. That's correct.

11 Q. And the proposed stipulation in front of the
12 Commission, that is suggesting a brand new study, though,
13 correct?

14 A. It is suggesting a brand new study to be filed
15 with the Commission prior to asking for an additional
16 extension or consideration of participation, and that be
17 filed November, 2015.

18 Q. Okay. And in that study, it's envisioned
19 there will be a modeling period where the parties will have
20 input; is that correct?

21 A. That is correct.

22 Q. But one of the parties not allowed to have
23 input under stipulation is MJMEUC; is that correct?

24 A. I'd have to confirm that.

25 Q. If you don't mind, just take a quick look. I

1 believe it's under paragraph 10(b) of the stipulation.

2 A. That is correct.

3 Q. Would you have any objection to MJMEUC having
4 a seat at the table when the modeling part of this study is
5 considered?

6 MR. LOWERY: Objection. Mr. Healy is
7 essentially asking the witness to negotiate a different
8 stipulation on the witness stand and I don't think it's
9 appropriate.

10 JUDGE WOODRUFF: Well, there is no stipulation
11 here, and I think it's an appropriate question, so I'm going
12 to overrule the objection.

13 MR. LOWERY: Very well.

14 THE WITNESS: Could you restate the question,
15 please?

16 BY MR. HEALY:

17 Q. Sure. Would you have any objection to MJMEUC
18 being involved in the modeling of a proposed study to
19 determine the benefits of staying in MISO?

20 A. Could you clarify what you mean by "being
21 involved?" I assume -- I assume AmerenUE or Ameren Missouri
22 would be the project manager?

23 Q. Correct. Under the terms as proposed in the
24 stipulation, there's a provision for the other parties to
25 participate, both in the modeling and in the application of

1 the data. And my question doesn't involve the data but just
2 the modeling side of this.

3 Would you have an objection to MJMEUC being
4 involved in the modeling of a new study?

5 A. Yeah, I think I would like to have the
6 modeling done under the management of Ameren Missouri. I
7 think it should be done for judging the benefits and costs to
8 MISO participation for Ameren Missouri customers. Now, to
9 the extent a party would like to suggest things that could be
10 analyzed, I think we would be okay with considering those.
11 But recognizing that the study is done for the benefit of
12 Ameren Missouri retail customers.

13 Q. Okay. Thank you. I'd like to turn to page 6
14 of your direct testimony.

15 A. Okay.

16 Q. And you discuss capacity sales there under
17 paragraph -- paragraph 8?

18 A. Yes.

19 Q. Okay. The proposed resource adequacy tariff
20 in front of MISO or in front of FERC right now, isn't one of
21 the proposed benefits of that tariff that there will be
22 increased price transparency for a capacity market and
23 capacity sales?

24 A. Yes, I believe there is.

25 Q. Okay. Yet, when you're calculating the

1 current benefits of staying in MISO, you had no problems
2 determining an actual number, is that correct, what capacity
3 sales are currently worth?

4 A. Well, when you say "no problems," it's really
5 not as transparent as it could be. There are limited broker
6 codes.

7 Q. Okay. But you were able to talk to brokers
8 and other financial people and determine some at least
9 prospective pricing of the capacity market going forward as
10 it is; is that correct?

11 A. That's correct. We do have some estimates,
12 that's correct.

13 Q. And you estimated that value to be about five
14 million dollars in your surrebuttal testimony; is that
15 correct?

16 A. Let me check that.

17 Q. It's on page 8, line 3 of your surrebuttal.

18 A. Correct.

19 Q. Okay. Now looking at the current state of the
20 capacity market inside MISO, would you agree that that market
21 currently as-is is fairly cheap and plentiful for capacity?

22 A. That's correct. It's because of the
23 supply-demand equation right now.

24 Q. Okay. Do you believe the tariff as proposed
25 by MISO and currently in front of FERC would raise those

1 capacity prices from where they are at right now?

2 A. I believe that the capacity prices would
3 primarily be determined by the supply-and-demand equation. I
4 think the market construct can help provide transparency, but
5 the prices themselves would be determined by the supply and
6 demand.

7 Q. Okay. Let me ask it a little bit different
8 way. Let's assume hypothetically MISO had a PJM-style
9 capacity market. Do you believe capacity prices would go up?

10 A. I still think it depends on supply and demand.
11 They may go up slightly. I really do not think it would be a
12 material change in the capacity prices just because of a
13 construct.

14 Q. Okay. Is it true that in the presentations to
15 executive leadership, that internal documents of Ameren
16 suggest that value could be as much as \$390 million if
17 there's a PJM-style capacity market inside of the MISO?

18 A. I believe there may have been those
19 presentations, yes.

20 Q. Do you believe that much of an increase in
21 price would benefit ratepayers across MISO?

22 A. I think as far as it concerns Ameren Missouri
23 customers, given that they are substantially long capacity
24 for the foreseeable future, it would -- to an extent the
25 prices do go up, it would benefit Ameren Missouri customers,

1 that's correct.

2 Q. Well, let's talk about capacity and where
3 Ameren's at currently. Turn to page 8 of your surrebuttal
4 testimony, line 7. You state that Ameren Missouri is long
5 and expects to remain so well beyond 2016; is that correct?

6 A. That's correct.

7 Q. Okay. Does that analysis consider recent
8 EPA rules?

9 A. That analysis does consider recent EPA rules,
10 yes.

11 Q. And to be specific, can you tell me which
12 rules that analysis included?

13 A. Right. So it's the -- it's the CSPER and also
14 the -- I believe it's the MACT now.

15 Q. Okay. Would you agree that those rules from
16 inception to being applied, that was a pretty rapid process.
17 Would you agree with that?

18 A. I'm sorry?

19 Q. From the inception of those two rules to being
20 applied, would you agree it was a fairly rapid process?

21 A. I'm not sure I agree with that.

22 Q. Okay. Would you agree that those rules from
23 when they were first proposed by EPA to being applied in the
24 industry would be less than three years?

25 A. I would agree with that.

1 Q. Have those rules affected capacity inside of
2 MISO?

3 A. Not -- well, there have been some announced
4 retirements in MISO as a result of those rules at a pretty
5 marginal glance.

6 Q. Okay. Are you aware of any other rules on the
7 horizon that could also impact Ameren's capacity at EPA?

8 A. I'm aware of other rules that may be proposed
9 by the EPA. I do not think they would impact Ameren
10 Missouri's generation in this time period that we're asking
11 for an extension for 2012 through 2016.

12 Q. But you would agree that if the EPA formulated
13 new rules, hypothetically, that we're not knowledgeable of,
14 they could be made to apply pretty quickly; is that correct?

15 MR. LOWERY: It calls for speculation. I
16 object.

17 MR. HEALY: I'm asking for his opinion, Judge.

18 JUDGE WOODRUFF: I'll overrule the objection.
19 If he knows, he can answer.

20 THE WITNESS: I actually don't agree with
21 that. I think it will take, as demonstrated by CSPER and,
22 you know, how that's been stated and care, I think it will
23 take a long time given the impact of the industry for the
24 rules to be proposed and actually implemented.

25 BY MR. HEALY:

1 Q. Let's look at the current capacity tariff in
2 front of FERC. Are you generally familiar with that tariff
3 as proposed by MISO?

4 A. I'm generally familiar, yes.

5 Q. Would you agree that FERC can make
6 modifications to that tariff if they so chose?

7 A. Yes, they can propose modifications if they so
8 choose, yes.

9 Q. Are you aware that Ameren, the holding
10 company, has advocated for more PJM-style capacity market
11 inside of MISO?

12 A. I'm not sure we've advocated that at FERC. I
13 think what we've advocated for, and this is true for Ameren
14 Missouri and all of its sister companies, is an efficient
15 long-term transparent market, which I think would benefit
16 ratepayers and sellers of capacity and the market
17 reliability. I think that's what we've advocated for.

18 Q. Turn to page 10 of your surrebuttal, line 1.
19 You state there that some events, which will make it more,
20 quote, PJM-like in certain respects, that would likely
21 benefit Ameren Missouri and its retail customers. And that's
22 your testimony, correct?

23 A. That's correct.

24 Q. So you're stating there, tell me if I'm wrong,
25 that there are some ways that if MISO became more like PJM on

1 a capacity market, it could actually benefit capacity
2 customers?

3 A. That's correct. And what I mean by that is if
4 there's a long-term transparent market, given that Ameren
5 Missouri customers are long capacity, the prices to an extent
6 they increase would benefit Ameren Missouri retail customers
7 for this duration of the extension that we're asking for.

8 Q. And that increase would be considered
9 volatility, would that correct, talking about a large
10 increase in capacity prices?

11 A. I'm not sure it would be considered
12 volatility. I think it would just be considered a
13 transparent market where people don't have the ability to bid
14 less because there isn't any transparency. It's actually
15 factoring the true value of the product.

16 Q. Would it be possible that Ameren Missouri
17 retail customers instead of receiving a benefit would be
18 paying that benefit to other people?

19 A. I think under the construct proposed by MISO
20 and filed at FERC, I do not think that's possible.

21 Q. On page 10, lines 20 through 22, you make the
22 statement that Ameren Missouri doesn't control FERC, which I
23 think everybody would agree with.

24 A. Yes, I do agree with that statement.

25 Q. Maybe we would all like to a little bit more

1 than we do. But you would agree that Ameren Missouri can
2 influence FERC, wouldn't you?

3 A. I would believe that we can propose our
4 comments and file those with FERC.

5 Q. Who's AER?

6 A. Ameren Energy Resource. That's the
7 unregulated merchant generation subsidiary of Ameren Corp.

8 Q. And they can also file comments at FERC,
9 correct?

10 A. Correct.

11 Q. Are you aware of the comments they filed
12 regarding the MISO capacity market?

13 A. Not exactly the specific comments. I'm
14 familiar with the general concept.

15 Q. Are you aware that the general concept is that
16 they want the opt-out provisions removed from the tariff?

17 A. That may be true.

18 Q. Does Ameren Missouri currently have a problem
19 if planning and building capacity is needed?

20 A. No.

21 MR. HEALY: No further questions.

22 JUDGE WOODRUFF: All right. For Public
23 Counsel?

24

25

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. MILLS:

3 Q. Good morning, Mr. Arora.

4 A. Good morning.

5 Q. Do you have a copy of your supplemental
6 surrebuttal testimony in front of you?

7 A. Yes, I do.

8 Q. On page 7 of that testimony at the very bottom
9 of the last line and continuing on to the next question, you
10 refer to, quote, the question of whether Ameren Missouri
11 should continue to participate in the Midwest ISO through the
12 2016 through 2017 time frame we are proposing. Is that your
13 reference there?

14 A. Yes.

15 Q. Okay. And then on page 8, at line 10, you
16 state that, As I have previously indicated, Ameren Missouri
17 is long capacity and is expected -- it's expected to remain
18 so well beyond the period of time for which permission to
19 continue participation in the Midwest ISO is being requested
20 in this case. Did I read that accurately?

21 A. Yes, you did.

22 Q. Would that statement still be accurate if UE
23 retired most of the generating capacity at the Meramec power
24 plant in the 2016 to 2017 time frame?

25 A. To answer that question, I think it would

1 really depend on what our forecasted load, and also honestly
2 what comes out of the MEEIA filing that's currently in front
3 of the Commission in terms of energy efficiency efforts at
4 Ameren Missouri.

5 Q. And what assumptions did you make with respect
6 to those two when you stated that Ameren is long capacity
7 well beyond the period of time?

8 A. So I assume that Meramec is not retired.

9 Q. Okay.

10 A. And our load growth is as per the preferred
11 plan in the IRP, and the energy efficiency programs are the
12 low-risk portfolio that we proposed. So it's the preferred
13 plan in the IRP.

14 Q. Okay. And if you continue all of those
15 assumptions except the assumption that Meramec continues to
16 generate, would this statement be correct?

17 A. Without updating it for what we know to be
18 true for load forecast, I'd have to check. Without updating
19 it for the load forecast, it may not be correct in the 2016
20 to 2017 time frame. But we do have a better load forecast
21 right now.

22 Q. So at least for the assumptions that you just
23 listed, if you only change the assumption about Meramec, it
24 may not be correct?

25 A. I actually think it still would be correct if

1 we update the load forecast.

2 Q. All right. Let me ask this one again, because
3 I'm not sure we have a clear answer. If you don't update the
4 load forecast and if you continue with the low-risk IRP,
5 which I believe you said were the assumptions that you made
6 when you first made this testimony, if you don't update those
7 but you do update Meramec to retire in 2016 to 2017, will the
8 statement be true?

9 A. It may not be. I'll have to confirm that.

10 Q. Okay. Now, at page 7 of your supplemental
11 surrebuttal testimony, at lines 18 through 20, you quote a
12 portion of the deposition of Ryan Kind that was taken in
13 November in this case; is that correct?

14 A. That's correct.

15 Q. Are you familiar with that deposition?

16 A. Yes.

17 MR. MILLS: Judge, I'd like to have an exhibit
18 marked.

19 THE COURT: Okay. We're up to Number 18.

20 (Exhibit Number 18 was marked for
21 identification by the Court Reporter.)

22 BY MR. MILLS:

23 Q. Mr. -- no, you haven't. I was about to ask
24 you if you've reviewed that before I realized I hadn't handed
25 you a copy.

1 Mr. Arora, I will represent to you that what
2 I've just handed to you as Exhibit 18 is the cover page
3 followed by a -- by several pages of the deposition of Ryan
4 Kind taken in November of this case. And if I could ask you
5 to please ignore the page numbers at the bottom of the page
6 and instead look at the page numbers at the upper right-hand
7 corner.

8 A. Okay.

9 Q. Is the -- the question and answer that you've
10 got on page 7 of your supplemental surrebuttal testimony, the
11 question and answer that appears from lines 6 through line 11
12 on page 120?

13 A. That's correct.

14 Q. Okay. And if you would look back at the --
15 the third page of the exhibit or page 117 from the
16 deposition, is that the discussion about capacity markets
17 beginning on line 22 of page 117 and continue all the way
18 through line 12 on page 125?

19 A. I think it starts a little earlier on page
20 117, but that's generally fair.

21 MR. MILLS: Okay. Judge, with that, I would
22 offer Exhibit 18 to put into context the quote that Mr. Arora
23 has in his testimony.

24 JUDGE WOODRUFF: Exhibit 18 has been offered,
25 any objections to its receipt?

1 MR. LOWERY: I do have an objection. It's
2 hearsay. The sponsoring party of a witness can't offer
3 through the testimony of another witness' portions of that
4 witness' deposition. It's an out-of-court statement
5 apparently being offered for the truth of the matter asserted
6 therein.

7 MR. MILLS: Judge, if that's the case, then
8 the portion that Mr. Arora cited in his testimony is also
9 hearsay.

10 MR. LOWERY: That is not true. It's admission
11 of a party opponent, which is accepted -- I agree it's
12 hearsay, and it's an exception to the hearsay rule, and it's
13 fully admissible. But the only proper way would be through
14 impeachment of the witness and he can't impeach Mr. Arora and
15 he can't just dump portions of Mr. Kind's deposition through
16 another witness. It's hearsay. There's no exception that
17 applies.

18 MR. MILLS: Judge, if that's the case, then
19 any testimony from a deposition can be taken to create any
20 kind of out-of-context, inaccurate, and misleading statement,
21 which I think is -- it's not quite misleading, but it
22 certainly is not a full picture of the -- of the statement
23 that Mr. Kind gave in his deposition.

24 MR. LOWERY: Mr. Mills is free to ask Mr. --
25 (Court reporter interruption.)

1 MR. LOWERY: But what he can't do is dump
2 Mr. Kind in the record as a substitute for him forming
3 questions and asking the witness questions that would elicit
4 what he would like the witness to say or what he hopes the
5 witness will say.

6 MR. MILLS: Judge, if we want to, I can go
7 through line by line, word by word from this deposition and
8 ask Mr. Arora did not Mr. Kind get posed a question that
9 appears on line 22 and read it in and then say did not
10 Mr. Kind give the following answer and read that in.

11 MR. LOWERY: I would object to that question.
12 That's not a proper question whether Mr. Kind was asked a
13 question or gave an answer. The proper question if Mr. Kind
14 made a point that --

15 (Court reporter interruption.)

16 JUDGE WOODRUFF: All right. I think we were
17 in the middle of one of the -- somebody was speaking when we
18 spoke, so whoever was speaking before could go ahead.

19 MR. LOWERY: I didn't really have, I don't
20 think, too much to add.

21 JUDGE WOODRUFF: Okay.

22 MR. LOWERY: The deposition is hearsay.
23 Mr. Mills can ask substantive questions to try to make the
24 points that Mr. Kind was trying to get across, and Mr. Arora
25 will give the answers that he will give to those questions,

1 but he can't use the text from the deposition as his question
2 as was Mr. Kind asked this and did he say that? What
3 difference does it make whether this witness says yes or no
4 to that. It's hearsay and it's an improper use of the
5 deposition.

6 JUDGE WOODRUFF: All right. I think it
7 probably is hearsay. As you're well aware, the Commission is
8 not bound by the technical rules of evidence. I'm going to
9 go ahead and admit the document.

10 MR. LOWERY: Just to make my record, Your
11 Honor, the hearsay rule is not a technical rule of evidence
12 under Missouri law and the Commission is bound by the hearsay
13 rules, and so I would submit that that ruling is in error as
14 a matter of law, and I would ask you to reconsider it on that
15 basis.

16 JUDGE WOODRUFF: All right. I'm still going
17 to overrule the objection. The document will be received.

18 (Exhibit Number 18 was received into the
19 record by Judge Woodruff.)

20 MR. MILLS: Okay. Then I have no further
21 questions.

22 JUDGE WOODRUFF: Okay. Then we'll move on to
23 questions from the bench, beginning with the chairman.

24 CHAIRMAN GUNN: I don't have anything.

25 JUDGE WOODRUFF: Commissioner Jarrett?

1 COMMISSIONER JARRETT: I don't have any
2 questions.

3 JUDGE WOODRUFF: Commissioner Kenney?

4 COMMISSIONER KENNEY: I have questions.

5 EXAMINATION

6 QUESTIONS BY COMMISSIONER KENNEY:

7 Q. Good morning, how are you?

8 A. Good morning. I'm good, thank you.

9 Q. So I want to explore the discussion that you
10 were just having about the proposed capacity market. And I
11 think your testimony is that because Ameren's long -- when we
12 say "Ameren's long," it means they have excess capacity,
13 right?

14 A. That's correct.

15 Q. So the capacity construct that's being imposed
16 at FERC, now that FERC's considering is ultimately beneficial
17 to the ratepayers because Ameren's long on capacity and won't
18 be able to sell that excess capacity at an increased price
19 that would endure to the benefit of the ratepayers?

20 A. It could be. I think the point I make in my
21 testimony is that there shouldn't be a material change in the
22 price itself because of a construct. There certainly would
23 be more transparency. But the price itself is determined by
24 supply and demand.

25 Q. Okay. Now would you agree with me that --

1 well, let me ask you another question. What's the -- what is
2 a reason for creating a capacity market as opposed to an
3 energy market or ancillary services market? What is the --
4 what is a purpose in creating an energy market -- I mean a
5 capacity market?

6 A. I think it's -- in my opinion, it's similar to
7 the purpose we have for integrated resource plan, and that is
8 to ensure that there is long-term generation available to
9 reliably serve the needs of either our customers or the
10 marketplace. And -- and that generation is probably --
11 properly valued and accounted for.

12 Q. So a purpose, and I just want to make sure I
13 understand your answer, is that a purpose for a capacity
14 market is to ensure adequate resources?

15 A. Correct.

16 Q. And MISO's proposal was driven or is in
17 response to FERC's concerns about inadequate locational
18 resource adequacy, correct?

19 A. I believe that's correct.

20 Q. Okay. So ostensibly, then, what MISO has
21 filed is to respond to concerns about locational resource
22 adequacy?

23 A. Correct.

24 Q. Are there other methods of ensuring adequate
25 locational resources other than a capacity market?

1 A. Well, I guess there could be. You know, to
2 the extent there's a long-term energy market that's
3 transparent and has the value of capacity embedded in it, as
4 long as it's long-term, that could be another way to -- to
5 get to the same place potentially. I think the benefit of
6 the capacity market is it identifies where the constraints
7 are, where the generation is needed, and provides long-term
8 value for what is clearly a pretty capital-intensive
9 investment.

10 Q. Is a one-year capacity market sufficient to
11 accomplish that purpose?

12 A. I think one-year capacity market in and of
13 itself is not sufficient, but it's certainly a start. I
14 would advocate for a five-year or more capacity market.

15 Q. And in fact, isn't that what Ameren is
16 advocating for?

17 A. I think that would be our view, that a
18 long-term capacity market, you know, is beneficial for Ameren
19 Missouri and other participants in the market, because from
20 resource planning perspective and given that it's my
21 responsibility to conduct resource analysis for Ameren
22 Missouri, I think I'd like to know what the options are
23 long-term at a transparent price for Ameren Missouri.

24 Q. And in fact, a year is not long enough to get
25 any new generation built, is it?

1 A. No, I think a year is a start towards a
2 longer-term capacity market, which would be beneficial.

3 Q. So the one-year proposal that MISO's currently
4 filed is inadequate, but is a start to something that is
5 aspirational down the road?

6 A. I think it provides price transparency and
7 it's a good start. I think a longer-term market is better.

8 Q. Would you agree with me that a one-year
9 capacity market is inadequate to ensure locational resource
10 adequacy?

11 A. I'm not sure it's inadequate because it does
12 provide a price signal.

13 Q. But if it's not long enough to get new
14 generation built, and I think you just testified that a
15 five-year market would be more appropriate, how is a one-year
16 market adequate to get new generation built and satisfy any
17 locational resource adequacy concerns?

18 A. Because the one-year market would still
19 provide price transparency year on year. And as investors
20 look at those prices, they could then see where the
21 locational constraints are and decide to site generation.

22 Q. If Ameren has no excess capacity, is this
23 one-year resource adequacy construct still beneficial?

24 A. Yes, I think it's still beneficial because if
25 -- even if Ameren is short of capacity or doesn't have enough

1 to cover its needs, given the construct where we have sales
2 dealing and marked-up provisions, it provides a price
3 transparency, which is I think what we would like for
4 resource planning. It's one of the reasons we go out for
5 RFPs, but they don't necessarily provide the transparencies
6 we are seeking, so having a year-on-year market that provides
7 transparency I think is beneficial long-term for resource
8 planning.

9 Q. But you said so long as there's the
10 self-scheduling and the opt-out provisions?

11 A. No, either way.

12 Q. Oh, with or without?

13 A. With or without. I think -- so in my mind,
14 there's two aspects. The self-scheduling and opt-out
15 provisions are there for generation that's already been
16 built. I think for generation that is yet to be built, a
17 transparent market provides the right signals to be able to
18 plan better, so the self-scheduling and opt-out on hedges for
19 generation that has already been built.

20 But when we are proposing to build new
21 generation, it's better to have a market that's transparent
22 so that we can plan better and also account for any
23 locational differences in the capacity that Ameren Missouri
24 would procure.

25 Q. Do you think that load serving entities in a

1 vertically integrated state have the same concerns as
2 merchant generation units in a non-regulated state as it
3 pertains to resource adequacy?

4 A. I guess "concerns" is pretty broad. I think
5 as it relates to the market design, I'd venture to say that
6 they should have the same aspiration of having an efficient
7 market so that the vertically integrated utility can procure
8 the capacity and the merchant generation can invest in
9 capacity if they so choose.

10 Q. So the general proposition that an efficient
11 market is good for everybody; is that correct what you're
12 saying?

13 A. Yes. That is Ameren Missouri and our
14 position.

15 Q. All right. Is there any evidence that we can
16 look to in existing markets to instruct us as to whether this
17 particular capacity market or even a three- to five-year
18 long-term capacity market does, in fact, result in a more
19 efficient market?

20 A. I think what I would say is we need to look at
21 the energy markets at MISO and it's clearly efficient and
22 it's been beneficial for Ameren Missouri in terms of being
23 able to make off-system sales given that they're long. And I
24 think a construct that starts providing a similar
25 transparency and has improved with stakeholder participation

1 could provide the same thing for a capacity market.

2 I don't know that I would point to a
3 particular capacity market and say this is the one we should
4 -- we should completely replicate because I do think MISO is
5 different and that's why the stakeholder process is what it
6 is and it tries to find the right solution for the market.

7 Q. So -- and I agree, MISO is different and so we
8 shouldn't necessarily look to PJM as it is and replicate what
9 they're doing. That's why we've got the self-scheduling and
10 the opt-out provisions, right?

11 A. Correct.

12 Q. So then why is Ameren in the long-term
13 advocating doing away of those provisions, the
14 self-scheduling and the opt-out provisions?

15 A. I don't know that we are advocating doing away
16 with it. I think what we're suggesting is that both are not
17 required, and our provision doesn't provide the price
18 transparency and we can achieve the same hedges with the
19 self-scheduling agreement, but it provides -- it does provide
20 the location of price certainty for -- price transparency for
21 capacity, which is beneficial for us for long-term resource
22 planning. And in the short-term, it's beneficial for making
23 sales.

24 Q. To the extent that we would look to PJM or the
25 New England ISO for instruction or as exemplars, would you

1 characterize those markets as having been successful? Let me
2 add a caveat, from a retail ratepayer standpoint.

3 A. I think they've been successful in parts and
4 there have been challenges. I think the idea of PJM where
5 it's clearly been demonstrated they were short capacity and
6 potentially even leaning on the system. Places like New
7 Jersey, for example, where they have an off-site generation
8 to account for that. So I think in that regard, it has been
9 successful long-term for the ratepayers.

10 Again, in a capacity as a long-term construct,
11 so a year-on-year change is not something that would
12 demonstrate one way or the other whether it's beneficial. I
13 think what's -- what's clearly demonstrated at PJM is that
14 the areas where is short capacity, and capacity is now coming
15 to those areas, for example in New Jersey.

16 Q. So it was successful in getting some new
17 generation built in New Jersey, and how long did it take from
18 the time the market was created to now that new generation
19 was being built in New Jersey?

20 A. I'm venturing to guess it was three or four
21 years, potentially.

22 Q. And what about retail prices?

23 A. Again, I wouldn't separate retail prices
24 capacity from energy. I think you would have to look at it
25 in combination. And to the extent that the energy market has

1 been more efficient and the capacity market has provided
2 signal for locating the right capacity, I think you'd have to
3 look at the total picture. And I don't have the analysis in
4 front of me to know in totality whether the rates have gone
5 down or not. I would venture to say that in MISO, the energy
6 prices have actually gone down.

7 COMMISSIONER KENNEY: That's all I have.

8 Thanks for your time.

9 JUDGE WOODRUFF: Thank you. Anyone wish to
10 recross based on those questions from the bench? MJMEUC?

11 RE CROSS-EXAMINATION

12 QUESTIONS BY MR. HEALY:

13 Q. I have just a couple questions, sir.

14 A. Okay. Thank you.

15 Q. You talked about some of the successes in PJM;
16 is that correct

17 A. Correct.

18 Q. In your opinion, were those successes because
19 of the market or in spite of the market?

20 A. I think the successes are because of the
21 market, because they provided a price signal.

22 Q. And a few minutes ago, you cited as an example
23 for why a MISO capacity market might work, you referenced the
24 MISO energy market, correct?

25 A. Correct.

1 Q. Would you agree with me that energy is a
2 commodity, it's all pretty well the same, it's electrons?

3 A. Energy is a commodity, yes.

4 Q. Would you agree with me that capacity comes in
5 a lot of different forms?

6 A. I'm not sure I would agree with that. To me,
7 it's also a commodity.

8 Q. Would you agree there's such thing as base
9 load capacity?

10 A. Yes.

11 Q. There's intermediate?

12 A. As is base load energy and intermediate
13 energy.

14 Q. Okay. There's also peaking capacity; is that
15 correct?

16 A. And peaking energy, correct.

17 Q. And there's also renewable capacity?

18 A. Correct.

19 Q. So it's not all the same. Would you agree
20 with that?

21 A. But I think in terms of market design,
22 capacity is capacity. It's a commodity.

23 MR. HEALY: That's all the questions I have.

24 JUDGE WOODRUFF: Okay. Public Counsel?

25 MR. MILLS: Just very briefly.

1 RE-CROSS-EXAMINATION

2 QUESTIONS BY MR. MILLS:

3 Q. You mentioned that in PJM that there were
4 portions of the system that were -- that were leaning on the
5 system. Do you recall that?

6 A. Yes.

7 Q. Is there a concern that -- that load-serving
8 entities in Illinois have been leaning on the MISO system
9 like you say happened with New Jersey?

10 A. When you say is there a concern --

11 Q. Do you have a concern?

12 A. I don't have a concern because MISO is
13 significantly long. I think long-term, a well-designed,
14 efficient market would ensure that there is adequate capacity
15 everywhere.16 Q. Do you believe that right now that there's
17 adequate capacity in Illinois?

18 A. Yes, I do.

19 MR. MILLS: That's all the questions I have.

20 JUDGE WOODRUFF: Redirect?

21 MR. LOWERY: I have a few questions, Your
22 Honor.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MR. LOWERY:

25 Q. You were asked by Mr. Mills about a

1 hypothetical about whether the Meramec plant might be retired
2 in 2016, 2017. Do you recall that?

3 A. I do recall that.

4 Q. You're familiar with the ultra-low sulphur
5 coal contract that Ameren Missouri has entered into?

6 A. Yes, I am.

7 Q. And I'm not going to go into the details
8 because some of that might be confidential. But my simple
9 question is: Does that contract impact AmerenUE -- Ameren
10 Missouri's ability to continue to operate coal-fired
11 generation beyond at least through 2017? When I say
12 "continue to operate," I mean in terms of meeting
13 environmental requirements.

14 A. Yes, it does. And again, that question was
15 hypothetical because right now, knowing the environmental
16 rules as they're currently proposed or may be proposed in the
17 future, and knowing our load growth, I do not envision
18 Meramec needing to be retired to comply.

19 Q. I think the CSPER rule came up. That's what I
20 call it. It's C-S-P-E-R I think is the acronym; is that
21 right?

22 A. That's right.

23 Q. And I think Mr. Healy asked you about the
24 implementation timeline that EPA had put forth. Do you
25 remember that?

1 A. Yes.

2 Q. Has something happened that has slowed down
3 that implementation timeline?

4 A. The rule has been suspended and right now it's
5 not sure when and if it may come back.

6 Q. Does that increase or decrease any pressure
7 one -- a generator might have felt to retire coal-fired
8 generation?

9 A. It reduces the pressure of a generator and the
10 need to retire.

11 Q. And do you have an opinion about whether the
12 Meramec plant will continue to operate throughout the
13 extended period of permission that we have here, that we're
14 proposing here? Do you have an opinion about that?

15 A. I think it will continue -- again, I think
16 that would be a part of the IRP operated, so I think we're
17 looking at that right now. I envision it will continue in
18 some form or fashion, whether it's coal or gas.

19 Q. You were asked questions by Commissioner
20 McKinnie [sic] about -- I think about vertically integrated
21 states and concerns about resource adequacy. Do you remember
22 those?

23 COMMISSIONER KENNEY: Congratulations on your
24 promotion.

25 MR. LOWERY: Did I misspeak your name? I'm

1 sorry, I apologize. Commissioner McKinnie. Or I'm sorry.
2 Commissioner Kenney. There's too many McKinnie and Kenneys,
3 you even spell your name differently.

4 COMMISSIONER KENNEY: We get mixed up all the
5 time.

6 BY MR. LOWERY:

7 Q. What kind of mix of vertically integrated
8 versus non-vertically integrated utilities exist at the MISO?

9 A. I think the mix is mostly vertically
10 integrated and even as much as 70 percent or so.

11 Q. Do you have an opinion about whether or not,
12 even given that mix, whether or not a mandatory capacity
13 market of some kind is generally a good thing or generally
14 not a good thing for vertically integrated utilities?

15 A. I think a capacity market is generally a good
16 thing for the market, for vertically integrated utilities,
17 and for motion generators because it provides price
18 transparency that is good for long-term resource planning.

19 Q. And did I understand your testimony to be that
20 you would hold the same opinion whether or not that
21 vertically integrated utility is long or short capacity?

22 A. That's correct. If we had long, it helps us
23 to better sell that capacity for the benefit of Ameren
24 Missouri customers. If we're short, that is we need
25 capacity, then it helps us better figure out where exactly to

1 procure the capacity from and when.

2 Q. I think Commissioner Kenney also asked you
3 about -- a question about replicating the PJM market. Do you
4 remember that?

5 A. I do.

6 Q. Is it Ameren Missouri's or Ameren generally
7 position generally that the idea here should be to replicate
8 the PJM market, for example the RPM construct that exists in
9 RPM?

10 A. No, no. I think our position is that we
11 should have a long-term, efficient transparent market that
12 helps planning purposes and reliability.

13 Q. When -- when -- I think this idea of PJM and a
14 PJM-like market came up in the questions. When you -- when
15 you or Ameren speaks about a PJM-like market, what do you
16 mean?

17 A. I think what we mean is where we'd have the
18 ability to have vocational capacity prices that are
19 determined on load forecasts that have been defined by the
20 ISO, and there's the ability to procure that capacity
21 long-term before it's needed at a price that's transparent.

22 Q. And in PJM, particularly their RPM construct,
23 are there a lot of other factors that don't necessarily have
24 anything to do with what you just testified to that Ameren
25 doesn't support?

1 A. I'm sure there would be.

2 Q. You were asked back -- let me ask you about
3 some of the questions Mr. Healy asked you.

4 One of the questions he asked you was about
5 MJMEUC being involved in the next study. Do you recall that
6 exchange?

7 A. Yes.

8 Q. Have MJMEUC's loads been included in the prior
9 studies, the prior two or three other studies that have been
10 done?

11 A. No, they have not.

12 Q. And why would that be?

13 A. The study is done for determining the cost and
14 benefit for Ameren Missouri customers and so that's the
15 impact of the study. MJMEUC is not an Ameren Missouri retail
16 customer.

17 Q. MJMEUC takes transmission service from the
18 MISO, in fact, right?

19 A. That's correct.

20 Q. And its transmission service that's subject to
21 the jurisdiction of the FERC?

22 A. That is correct.

23 MR. LOWERY: I don't believe I have any other
24 questions, Your Honor. Thank you.

25 JUDGE WOODRUFF: All right. Then Mr. Arora,

1 you can step down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Call your next witness.

4 MR. LOWERY: Call Jamie Haro to the stand.

5 (The witness was sworn.)

6 JUDGE WOODRUFF: You may inquire.

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. LOWERY:

9 Q. Will you please state your name for the
10 record?

11 A. My name is Jamie Haro.

12 Q. Mr. Haro, did you cause to be prepared in this
13 docket a piece of surrebuttal testimony that's been marked
14 for identification as Exhibit 4?

15 A. Yes.

16 Q. If I were to ask you the same questions as
17 posed in that Exhibit 4, would you give the same answers
18 today?

19 A. Yes, I would.

20 Q. Do you have any corrections or modifications
21 you need to make?

22 A. None.

23 MR. LOWERY: With that, Your Honor, I offer
24 Exhibit 4 and tender Mr. Haro for cross-examination.

25 JUDGE WOODRUFF: Exhibit 4 has been offered.

1 Any objection to its receipt? Hearing none, it will be
2 received.

3 (Exhibit Number 4 was received into the record
4 by Judge Woodruff.)

5 JUDGE WOODRUFF: For cross-examination, we
6 begin with MISO.

7 MR. ZOBRIST: No questions.

8 JUDGE WOODRUFF: Staff?

9 MS. McCLOWRY: No questions.

10 JUDGE WOODRUFF: MIEC?

11 MS. ILES: No questions.

12 JUDGE WOODRUFF: SPP?

13 MR. LINTON: No questions.

14 JUDGE WOODRUFF: Empire?

15 MR. COOPER: No questions.

16 JUDGE WOODRUFF: MJMEUC?

17 MR. HEALY: No questions.

18 JUDGE WOODRUFF: Public Counsel?

19 MR. MILLS: No questions.

20 JUDGE WOODRUFF: All right. Then we'll come
21 up to questions from the bench. Mr. Chairman?

22 CHAIRMAN GUNN: I don't have any.

23 JUDGE WOODRUFF: Commissioner Jarrett?

24 COMMISSIONER JARRETT: I have no questions.

25 JUDGE WOODRUFF: Commissioner Kenney?

1 COMMISSIONER KENNEY: Just a few.

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER KENNEY:

4 Q. How are you doing?

5 A. Good, thank you.

6 Q. So do you agree with your colleague that the
7 -- a purpose of a long-term capacity market is to incent new
8 generation in the proper locations?

9 A. Absolutely. I think the main purpose is to
10 insure reliability.

11 Q. Through insuring sufficient capacity?

12 A. Yes, and the price should be a guide to show
13 there's a shortage of capacity that needs to be built so we
14 avoid any reliability issues.

15 Q. Is it your opinion that the current one-year
16 capacity market that's being considered now that MISO filed
17 is sufficient to satisfy that goal?

18 A. Yeah, I think the point that we may have been
19 missing is that MISO's not the only market. There's also a
20 bilateral market that can help in this case. So even though
21 MISO only has to -- I only have to fulfill certain planning
22 year at a time, I can be transcydling for three years out.

23 Q. Bilaterally?

24 A. Bilaterally. So the framework that they
25 established allows me to interact with other counterparties

1 and buy or sell capacity in the other years.

2 Q. From an economic standpoint, is there -- in a
3 vertically integrated market, where you have integrated
4 resource planning and you have state jurisdictional
5 commissions insuring reliability, why would you need a
6 long-term capacity market?

7 A. Well, because a long-term capacity market
8 helps having a more efficient market where supply and demand
9 comes together. So even though, most likely, I will be long
10 through the IRP, there may be some catastrophes that force me
11 to buy capacity. So I could either be long or short if I
12 have a transparent market and efficient market, I will make
13 sure that I can get the best available capacity for my -- for
14 my needs and slowing either the cost of the capacity for my
15 ratepayers or getting the most out of my excess capacity.
16 That also benefits my ratepayers.

17 Q. So in addition to insuring reliability through
18 incenting adequate capacity, a long-term capacity market also
19 insures a more efficient market?

20 A. Yes.

21 Q. All right.

22 COMMISSIONER KENNEY: That's all I have.
23 Thanks.

24 JUDGE WOODRUFF: Any recross based on those
25 questions from the bench? I don't see any hands going up.

1 Any redirect?

2 MR. LOWERY: No, Your Honor.

3 JUDGE WOODRUFF: All right. Then Mr. Haro,
4 you can step down.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: And the next Ameren witness
7 is Ms. Borkowski, and I believe she won't be available until
8 tomorrow; is that correct?

9 MR. LOWERY: That's correct. She is actually
10 at the NERC board meeting as we speak.

11 JUDGE WOODRUFF: All right. The next witness
12 would be Mr. McKinnie for the Staff. You can call your
13 witness.

14 MS. McCLOWRY: Staff calls Adam McKinnie.

15 MR. LOWERY: Commissioner Kenney, I saw some
16 disappointment on your face. I just wanted to -- did want to
17 let you know that we did indicate in our schedule that she's
18 not available, so.

19 COMMISSIONER KENNEY: I know. I'm just sad
20 because I won't get to see her until tomorrow.

21 (The witness was sworn.)

22 DIRECT EXAMINATION

23 QUESTIONS BY MS. McCLOWRY:

24 Q. Good morning, Mr. McKinnie. Would you please
25 state your name for the record?

1 A. Adam McKinnie.

2 Q. And by whom are you employed and in what
3 capacity?

4 A. I'm the chief utility economist at the
5 Missouri Public Service Commission.

6 Q. And are you the same Adam McKinnie who
7 prepared and caused to be filed rebuttal testimony marked as
8 7-HC and 7-NP, and supplemental rebuttal testimony that was
9 filed on October 31st marked as Exhibit 8, second
10 supplemental rebuttal that was filed on November 18th marked
11 as 9-HC and 9-NP, and surrebuttal filed on February 6th, 2011
12 [sic], marked as Exhibit 10?

13 A. Yes, I am.

14 Q. Do you have any corrections to your rebuttal,
15 supplemental rebuttal, second supplemental rebuttal or
16 surrebuttal that has not been addressed in subsequent
17 testimony?

18 A. Yes, I do.

19 Q. Go ahead.

20 A. Okay. There's going to be three changes. The
21 first one is in rebuttal, page 21, lines 4 and 5. There's a
22 parenthetical discretion that currently reads, As described
23 in RSMo 393.170 and 390.190.1. I need to change that to read
24 as described in RSMo 393.170 and 393.190.1.

25 Q. Any other change?

1 A. Yes, my second of three changes is in my
2 second supplemental rebuttal. On page 2 in line 1, it reads
3 currently, Midwest Industrial Energy Consumers and it should
4 read Missouri Industrial Energy Consumers.

5 Q. And as a result of the non-unanimous
6 stipulation -- non-unanimous stipulation and agreement, Staff
7 has had a change of position in this matter, has it not?

8 A. Yes, it has.

9 Q. And does that change of position effect any
10 testimony you have filed in this case or any recommendation
11 Staff made in this case?

12 A. Yes, it does. Going back to my rebuttal
13 testimony, on page 22, lines 3 through 27, those are no
14 longer Staff-recommended conditions in this case.

15 Q. Are those all the changes you have?

16 A. Yes, they are.

17 Q. Mr. McKinnie, with the exception of the
18 portions of testimony you have just identified as having been
19 effected by Staff's change of position and the other changes
20 you made, is the testimony that you have filed in this matter
21 true and accurate to the best of your knowledge and belief?

22 A. Yes, it is.

23 Q. And if asked those questions today, would your
24 answers be the same?

25 A. Yes, they would.

1 MS. McCLOWRY: At this time, I would move for
2 the admission of Mr. McKinnie's testimony marked as Exhibits
3 7-HC, 7-NP, 8, 9-HC, and 9-NP and 10, and I tender the
4 witness for cross-examination.

5 JUDGE WOODRUFF: All right. 7-HC and NP, 8,
6 9-HC and NP, and 10 have been offered. Any objections to
7 their receipt? Hearing none, they will be received.

8 (Exhibit Numbers 7 through 10 were received
9 into the record by Judge Woodruff.)

10 JUDGE WOODRUFF: For cross-examination, we
11 begin with Ameren.

12 MR. LOWERY: No questions.

13 JUDGE WOODRUFF: MIEC?

14 MS. ILES: No questions.

15 JUDGE WOODRUFF: MISO?

16 MR. ZOBRIST: No questions.

17 JUDGE WOODRUFF: SPP?

18 MR. LINTON: No questions.

19 JUDGE WOODRUFF: Empire?

20 MR. COOPER: No questions.

21 JUDGE WOODRUFF: MJMEUC?

22 MR. HEALY: No questions.

23 JUDGE WOODRUFF: Public Counsel?

24 MR. MILLS: Yes, I have a few. Judge, is it
25 okay if I do it from here rather than the podium?

1 JUDGE WOODRUFF: You can do that. That's
2 fine.

3 CROSS-EXAMINATION

4 QUESTIONS BY MR. MILLS:

5 Q. Mr. McKinnie, you have a copy of your rebuttal
6 testimony there?

7 A. Yes, I do.

8 Q. And I'm going to begin by asking you some
9 questions with respect to the -- the bulk of page 22 of that
10 testimony that you just referenced in your list of
11 corrections.

12 And beginning on line 3, sort of beginning
13 with the middle of the sentence there, your testimony states
14 that, Staff recommends that the Commission, in essence,
15 continue -- condition continued approval for Ameren Missouri
16 to remain in MISO, to Ameren Missouri agreeing in this case
17 to the Commission application of any existing terms and
18 conditions in this case regarding Ameren Missouri as a
19 transmission constructor, owner, or operator to any existing
20 or future Ameren Missouri affiliates, including ATX, to which
21 are transferred any rate to construct, own, and/or operate
22 transmission.

23 Is that the way your testimony reads as you
24 just had it submitted to the record in this case?

25 A. With the exception of the change that we

1 discussed, yes, those are the words in my testimony.

2 Q. Okay. And then you go on to reference in the
3 following sentence the existing terms and conditions
4 including Section 5.3 of the service agreement, correct?

5 A. Yes.

6 Q. And then in fact, you go on on lines 11
7 through 21, to quote the language from Section 5.3 of the
8 service agreement; is that correct?

9 A. That is correct.

10 Q. Now, there are a fairly large number of
11 existing terms and conditions that were referenced in the
12 Staff recommendation -- in the -- in your testimony beginning
13 at line 3 on page 22; is that correct?

14 A. I don't know if I would say there's a large
15 number, but there are several.

16 Q. At least in paragraphs 10(a) through 10(j) of
17 the non-unanimous stipulation and agreement, correct?

18 A. Yes.

19 Q. Okay. And out of all of the terms and
20 conditions, at this portion of your testimony, you only
21 specifically referenced and quoted one of those existing
22 terms and conditions; is that correct?

23 A. Of the ones included here, yes, I -- I did
24 include one of them specifically.

25 Q. Okay. And that one is Section 5.3 of the

1 service agreement, correct?

2 A. That is the specific inclusion, correct.

3 Q. And the service agreement is still in effect,
4 is it not?

5 A. It's my understanding that it is currently
6 today.

7 Q. Okay. And did not the -- the FERC accept the
8 service agreement and allow it to go into effect?

9 A. That is my understanding, yes.

10 Q. And the service agreement is signed both by
11 Union Electric at the time, I believe it was maybe perhaps
12 Ameren -- no, I believe it was perhaps Union Electric --
13 Ameren -- AmerenUE, I believe it was at the time. At any
14 rate, the name under which Union Electric Company did
15 business at that time as well as the MISO; is that correct?

16 A. I would have to check the service agreement
17 specifically to make sure.

18 Q. Okay. Well --

19 MR. MILLS: Judge, may I approach?

20 JUDGE WOODRUFF: You may.

21 BY MR. MILLS.

22 Q. Mr. McKinnie, I've handed you a copy of OPC
23 DR 2026 in this case and the response thereto. Can you
24 identify whether or not that is the service agreement; and if
25 so, can you refresh your recollection about whether or not UE

1 and the MISO both signed it?

2 A. I believe it's the service agreement, and if
3 you'll allow me to flip to the end, I could do that for you.

4 Q. Please do.

5 A. I see a signature block for David A. Whiteley,
6 W-h-i-t-e-l-e-y, from Ameren Services Company, and then I see
7 a signature block from Midwest Independent Transmission
8 System Operator on page 14 that is signed by James P.
9 Torgorsen of -- I'll say of MISO.

10 And then on page also 14, that's interesting,
11 and there's a signature block for Ameren Services Company
12 that is then signed by David A. Whiteley. So yes, I would
13 say it's been signed by both Ameren Services Company and
14 Midwest ISO.

15 Q. All right. Ameren Services Company on behalf
16 of Ameren Missouri, correct?

17 A. I do not see those words on page -- pages 14.

18 Q. Okay. Is it your understanding that the --
19 that the -- the service -- that the service agreement is
20 between Ameren Services and MISO?

21 A. I would have to refresh my recollection, but
22 it is my belief that it's Ameren Services Company signing on
23 behalf of AmerenUE.

24 Q. And just to --

25 A. Or Ameren Missouri or any of the other

1 collection of names that that company has used.

2 Q. Could you turn back to the front page of the
3 service agreement and the very first paragraph and see if
4 that clarifies your recollection?

5 A. Yes, I'm there, and it does describe Ameren
6 Services Company as agent for Union Electric Company, d/b/a
7 AmerenUE. So yes, that jives with my understanding.

8 Q. Okay. Now, do you have a copy of Mr. Kind's
9 rebuttal testimony in this case with you?

10 A. I believe I do.

11 Q. Okay. Could I get you to pull that out and
12 turn to page 11?

13 A. Did you say page 11?

14 Q. Yes.

15 A. I'm there.

16 Q. And have you read this testimony?

17 A. I have previously, yes.

18 Q. And in fact, you responded to it in some of
19 your testimony, correct?

20 A. I believe my surrebuttal testimony is
21 responding to Mr. Kind's supplemental rebuttal.

22 Q. Okay. If I could get you to look at the
23 answer that begins on line 3, is the majority of that answer
24 a quotation from a statement on the record in Case Number
25 EO-2003-0271?

1 A. That's how it is titled, yes.

2 Q. Could you go ahead and read the statement that
3 runs from line 5 to line 23?

4 A. Yes.

5 Q. Could you read it into the record, please?

6 A. Oh, my apologies. "Another key feature of the
7 service agreement that's built in deals with giving this
8 Commission a voice in future transmission upgrades in
9 Missouri that the ISO might think is needed. Let me explain
10 that just a little bit further. As you know, in Missouri, if
11 we are going to build transmission within our existing
12 certificated area, there's no requirement that we come and
13 get Commission permission to do that. You probably also know
14 that we also meet semi-annually with Staff and Public Counsel
15 for Resource Planning Briefings that deal with our resource
16 generation and transmission. [Emphasis added.]

17 "The service agreement provides that if the
18 ISO, for example, believes that transmission needs to be
19 built in Missouri, and if that transmission is not within our
20 resource plan, and even if that transmission would be within
21 our existing certificated area, nevertheless, we would have
22 to come to this Commission and obtain this Commission's
23 approval of building that transmission, that gives you a
24 voice and a measure of control over building transmission
25 that, from a more of a top-down perspective, that the RTO

1 believes may be needed by not necessarily been a part of
2 Utilities Resource Plan, and we think that's an important
3 protection for rate payers. [Emphasis added.]"

4 Q. Okay. Now, do you agree with Mr. Lowery's
5 statement in that case that that would be an important
6 protection for ratepayers?

7 A. Could you be specific which particular?

8 Q. In particular, the portion of the -- of the
9 statement that's bolded from lines 17 through 20.

10 A. I believe it is -- I believe that is an
11 important protection for ratepayers.

12 Q. Now, in your surrebuttal testimony, at pages 9
13 through 12, you're generally addressing the Missouri Public
14 Service Commission's ability to set the transmission
15 component of bundled retail rates; is that correct?

16 A. That is correct. Well, it's starting on page
17 9, yes.

18 Q. Yeah, page 9 through page 12.

19 A. Yes.

20 Q. And in that section of your testimony, is it
21 correct that you express your belief that the Commission will
22 continue to have this ability to set the transmission
23 component of the bundled retail rate because Ameren
24 affiliates, including ATX, would need a Certificate of
25 Convenience and Necessity to construct, own, and operate

1 transmission facilities in Missouri?

2 A. I would say that's one of the reasons, yes.

3 Q. Okay. And on page 10, in the middle of that
4 discussion, you opine that a future -- page 10, line 15, if I
5 didn't say the line number, "a future CCN case" -- and CCN is
6 an acronym for Certificate of Convenience and Necessity,
7 correct?

8 A. "On advice of Staff counsel," that is what my
9 testimony says.

10 Q. Okay. That "a future CCN case for an Ameren
11 Missouri affiliate to construct transmission facilities would
12 be a vehicle for the Commission to effectuate conditions to
13 preserve Commission control over the transmission component
14 of the bundled retail rate to Ameren Missouri retail
15 customers;" is that correct?

16 A. That is what the testimony reads.

17 Q. Okay. And it's your understanding that based
18 on your conversation with legal counsel that the Commission
19 has authority to condition the CCN on such condition or
20 conditions as it may deem reasonable and necessary? Is that
21 your testimony?

22 A. I'm not sure if we spoke specifically about
23 the -- the two conditions you said that would be necessary
24 for the condition to provide those conditions. You said
25 reasonable and necessity. I'm not sure we got to that

1 specific level of detail, but yes, we did -- that was
2 discussed between me and my counsel, yes.

3 Q. Okay. And if I can get you to refer to page
4 10, line 2. Is that where the reasonable and necessary comes
5 in?

6 A. Yes.

7 Q. Okay. Now, isn't it true that a CCN case
8 would only be opened if an Ameren affiliate or a
9 non-affiliated transmission developer filed an application
10 with the Commission for a Certificate of Convenience and
11 Necessity?

12 A. I'm not an attorney. I don't know of exactly
13 what causes a CCN case to be opened. I'm not sure whether or
14 not another -- whether or not another avenue is possible.

15 Q. In your experience at the Commission, have you
16 ever known a CCN case to be opened from any other cause other
17 than a -- an entity filing an application?

18 A. I am not specifically aware of any other
19 avenue that has caused the CCN case to be opened.

20 Q. Okay. Now, I know you're not a lawyer, but in
21 your lay opinion, are you aware that there are many opinions
22 in -- in -- many legal opinions that are given with 100
23 percent certainty?

24 A. I'm aware that legal opinions are given. I
25 generally do not ask the level of certainty that is given

1 behind those opinions.

2 Q. In your experience, at least, with the law as
3 it pertains to regulated utilities, are there very many sure
4 things?

5 A. I would say there are a few sure things, but
6 to say there are many would -- would perhaps be a stretch.

7 Q. Okay. If, just hypothetically, the legal
8 opinion on which you're relying on on pages 9 through 12 of
9 your testimony is incorrect, how does the Missouri Public
10 Service Commission maintain jurisdiction over the
11 transmission component of bundled retail rates?

12 A. I would say it would be difficult to do so.

13 Q. How difficult? My question was: How do they?

14 A. Sure. Oh, I'm sorry.

15 Q. Not whether it would be difficult, but how
16 would it arise?

17 A. My apologies. I would say it would have to be
18 through some sort of retail rate case in which transmission,
19 I'll say costs, based on construction or operation of
20 transmission, or some sort of other cost would be attempted
21 to be passed through to ratepayers. That would be my thought
22 of -- of how such an attempt would be made. But -- and I
23 think that answers your question of how.

24 Q. So you're talking about in a Missouri Public
25 Service Commission case that is setting retail rates, the

1 Commission would look at FERC jurisdictional rates in that
2 case?

3 A. I would assume that would be one way that the
4 Commission could do it to -- in order to look at that. But
5 yes -- I'll leave it at that, yes.

6 Q. Okay. And in that case, possibly disallow
7 some of the FERC jurisdictional costs?

8 A. That would be how they could. That's not
9 speaking to how effective that would be. But that would be
10 how they could attempt.

11 Q. Okay. And do you have an opinion about how
12 effective that would be?

13 A. I'm not a lawyer, but I -- I do have a -- have
14 a thought about that, yes.

15 Q. And what is your opinion about how effective
16 that would likely be?

17 A. It is my understanding that that would be
18 exceptionally difficult.

19 Q. Now, with respect to the -- the whole concept
20 that the Commission maintains jurisdiction through conditions
21 that it can impose in future CCN cases, would the
22 effectiveness of that jurisdiction necessarily depend upon
23 future Staff members or some other party raising such issues
24 in CCN cases?

25 A. I would assume that that would have a large

1 effect on what conditions came out. I believe there may be
2 other factors at play.

3 Q. Okay. Would it also not depend on future
4 Commissions being willing to order such conditions?

5 A. Yes, that would be one of the other factors at
6 play.

7 Q. So the effectiveness of this future CCN case
8 depends on, one, the accuracy of the opinion that current law
9 requires a CCN for transmission; is that true?

10 A. Yes, that would be one factor.

11 Q. Okay. Does it also depend on the current law
12 not being changed?

13 A. I would assume that would be a factor as well.

14 Q. Okay. Does it also depend on Staff or some
15 other party advocating for appropriate conditions on a CCN?

16 A. That would be -- that would be a factor that
17 could influence the outcome. I believe there would be other
18 factors, of course, as well.

19 Q. Okay. If no party is advocating for
20 conditions, how -- how would it come up in such a case?

21 A. Again, not a lawyer, but I'm not sure whether
22 or not the Commission could issue one on its own, if it
23 developed some sort of record or did something of that
24 nature. But that was one of the things that we -- that we
25 discussed earlier. It would be based on the willingness of

1 the Commission to effectuate such a condition.

2 Q. Okay. And that was going to be my last
3 question.

4 MS. McCLOWRY: Mr. Mills, can I interrupt you
5 to give him his water?

6 MR. MILLS: Oh, sure.

7 BY MR. MILLS.

8 Q. And so I believe you just identified the last
9 dependency, which is that the PSC would actually adopt and
10 order conditions in future CCN cases?

11 A. Yes, that would be one significant factor.

12 Q. Okay. Now, back to your testimony on page --
13 I'm sorry, your surrebuttal testimony on page 10, and I'm at
14 the very bottom of the page, the last line. And there you're
15 discussing the situation in which an Ameren affiliate did not
16 file for a CCN and you opine that the Staff counsel's
17 department could commence proceeding against that affiliate,
18 correct?

19 A. That is what the testimony says, yes.

20 Q. And can you explain to me why in that
21 statement you used the word "could" as opposed to "would?"

22 A. Because we're -- I believe it's because it's
23 talking about the ability to do so.

24 Q. Okay. Do you have an opinion about the type
25 of situation in which the Staff counsel's department would

1 choose or would choose not to commence such proceedings?

2 A. Yes, I think I have such an opinion.

3 Q. Okay. And under what circumstances would or
4 would not the Staff commence such a proceeding?

5 A. I cannot say for sure because I am not always
6 privy to the inner discussions of the Staff counsel and the
7 decisions that they make, but I would assume if they thought
8 that an Ameren transmission affiliate that did not have a
9 certificate was constructing and therefore in violation of a
10 rule, that they would file a complaint case.

11 Q. And just in general terms, would the ability
12 of the Staff to adequately and effectively prosecute such
13 complaint case depend on resource availability and other
14 workload?

15 A. I would assume that that would be a factor
16 that would need to be taken into consideration. You can't
17 always do what you want.

18 Q. Now, shifting gears a little bit on you, there
19 is -- and do you have a copy of the non-unanimous stipulation
20 and agreement?

21 A. Yes, I do.

22 Q. Okay. I'm going to ask you some questions
23 about 10(j). Are you there?

24 A. Yes, I am. Thank you.

25 Q. There are some -- some calculations that would

1 need to be made pursuant to that subsection to quantify an
2 adjustment to Ameren Missouri's revenue requirement in a rate
3 case; is that correct?

4 A. That is correct.

5 Q. Have you, yourself, ever performed this type
6 of calculation?

7 A. I don't believe I have myself.

8 Q. Okay. Do you believe that you are qualified
9 to and able to perform this type of calculation?

10 A. With some assistance from other members of
11 Staff, I believe -- if I was still on Staff at that time,
12 with some assistance, I could perform that calculation.

13 Q. Okay. And what assistance from what members
14 of the Staff would you need?

15 A. Hypothetically speaking, I would probably go
16 to someone with a background in financial analysis and
17 capital structure to make sure that I'm setting that up
18 correctly in terms of debt equity ratios and things of that
19 nature.

20 I would also probably have to go back and try
21 to figure out the right way to remove CWIP. Under the
22 circumstance in which CWIP had been requested by an Ameren
23 affiliate and been included with rates, I would need some
24 assistance with that, so I would again probably talk to
25 somebody with either -- I would say somebody in auditing or

1 somebody within the financial department, and I would request
2 their assistance in making that calculation, if I were to
3 make the calculation.

4 Q. Okay. And when the Staff determined to be a
5 signatory to the non-unanimous stipulation and agreement, did
6 Staff members from those departments review this language in
7 10(j)?

8 A. I know that was discussed. I'm trying to
9 remember if it actually occurred. I don't remember for sure.

10 Q. Do you recall me taking your deposition a few
11 weeks ago in this case?

12 A. Yes, I do.

13 Q. And do you recall that in that deposition, you
14 testified that with the exception of Natelle Dietrich, you
15 were the only technical Staff person to be involved in the
16 case?

17 A. I believe that is what I testified, I would
18 have to see the deposition to be 100 percent sure. But -- it
19 may have been discussing more testimony and things of that
20 nature, but yes.

21 Q. Okay. So with respect to the question about
22 having members of the auditing or financial analysis
23 department review the language in 10(j), it's your testimony
24 that you don't know whether or not those Staff members were
25 involved?

1 A. I cannot say for sure.

2 Q. Okay. Now, with respect to your surrebuttal
3 testimony, which is the testimony filed earlier this week, if
4 I can get you to turn to the discussion beginning at the
5 bottom of page 16 about the Arkansas Order. Are you there?

6 A. I am there. Thank you.

7 Q. Does your testimony there mean that the
8 Arkansas Public Service Commission will not impose the
9 conditions that Mr. Kind discussed in his testimony?

10 MR. LOWERY: Objection, calls for speculation
11 as to what the Arkansas Commission will or won't do.

12 MR. MILLS: It does not. It calls for an
13 explanation of what his testimony says with respect to that.

14 JUDGE WOODRUFF: I'll overrule the objection.

15 THE WITNESS: Can I have the question one more
16 time?

17 BY MR. MILLS.

18 Q. Yes. Is your testimony that the -- to the
19 effect that the Arkansas Public Service Commission will not
20 impose the conditions that Mr. Kind talks about in his
21 testimony?

22 A. That is not my testimony.

23 Q. Okay. Does the second Order to which you
24 refer abandon those conditions that Mr. Kind mentioned in his
25 testimony?

1 A. I do not believe so.

2 Q. Okay. And from your perspective, and as you
3 testify in your case, what specifically does the second Order
4 do with respect to those conditions?

5 A. I would just say that Order 56, not being an
6 expert in Arkansas Commission Orders and not knowing exactly
7 how their cases always run, just kind of says it's not final
8 and it's guidance at this point.

9 Q. Okay. And does the second Order even mention
10 specifically the conditions that Mr. Kind testified about in
11 his testimony?

12 A. I would have to rereview the entirety of Order
13 56 to answer that question. I know that the excerpt that I
14 have provided here does not address conditions.

15 Q. How did you become aware of Order 56 issued by
16 the Arkansas Public Service Commission?

17 A. I may have heard about it through some SPP
18 discussions, but it was sent to me by my legal counsel.

19 Q. Okay. Still in your surrebuttal testimony, if
20 I can get you to turn back to page 11. At line 25, you're
21 talking about Mr. Kind suggested language that is intended to
22 cover items he lists on page 12, lines 15 through 17 of his
23 supplemental rebuttal testimony. And you go on to more
24 specifically identify them as abandoned plant recovery,
25 recovery on a current basis instead of capitalizing

1 pre-commercial operations, expenses, and accelerated
2 depreciation. Do you see that testimony?

3 A. Yes, I see that testimony.

4 Q. Is it your -- is it your testimony that the
5 non-unanimous stipulation and agreement covers those items?

6 A. That is not specifically my testimony.

7 Q. Okay. Then I'll have to ask you what you mean
8 by that caveat specifically?

9 A. My testimony, I believe, the -- I'll say the
10 meat or the crux of the paragraph is at page 12, lines 4
11 through 6, talking about how there's no more specific in
12 Section 10(c) in the present non-unanimous stipulation and
13 agreement that's referring back to the section on incentive
14 matters in EO-2008-0134.

15 Q. Okay. So to summarize, the last stipulation
16 didn't cover these specifically and the current non-unanimous
17 stipulation doesn't cover them specifically either?

18 A. I don't believe this portion of testimony
19 specifically addresses whether or not they're covered. It's
20 just a comparison of the -- of the two languages on incentive
21 matters.

22 Q. Okay. Then let me ask the question again. Do
23 you believe that the current non-unanimous stipulation and
24 agreement addresses these items?

25 A. Specifically, I don't believe it does, in

1 terms of -- in terms of Ameren-affiliate construction.

2 Q. Does it address them in some non-specific way?

3 A. Well, I believe that to the extent that the
4 Commission retains jurisdiction over Ameren Missouri's
5 transmission component of the bundled retail rate, I would
6 believe that the Commission would retain jurisdiction on it
7 for those situations in which Ameren Missouri is a
8 transmission constructor.

9 Q. Okay. And I hate to flip-flop around on you,
10 but I'd like to turn back to the non-unanimous stipulation
11 and agreement again in paragraph 10(j). And the provisions
12 of paragraph 10(j) have a -- have a specific term, do they
13 not?

14 A. Yes, they do.

15 Q. And once that term expires, will it be
16 difficult for the Missouri PSC to exclude costs from the
17 transmission components of bundled retail rates?

18 A. I would say it depends on a myriad of factors.

19 Q. Okay. Do you have a copy of your deposition
20 with you?

21 A. If so, it's in my kind of satchel-type item
22 over there. Yes, I have a copy of my deposition.

23 Q. If I can get you to turn to page 28. And the
24 question that begins at line 4 on page 28 is: Will the
25 Commission then have the ability to adjust the costs

1 allocated to Ameren Missouri in a similar fashion as to the
2 revisions in paragraph (j). And then you ask the clarifying
3 question: To make sure I understand, you're ask -- oh,
4 regarding paragraph (j), and I say regarding paragraph (j).
5 And then your answer is: I'm sorry, I would say it would be
6 difficult using the language of paragraph (j) itself. And
7 then go ahead and read this, but I'm going to paraphrase, but
8 then you go on at lines 3 through 4 of the following page,
9 page 29, you say I believe it would be difficult to do so.

10 Do you see that?

11 A. Yes, there are a few other things there, of
12 course, but yes, I believe you've characterized the lines you
13 have cited accurately.

14 Q. Okay. Is that -- is that still your position?

15 A. I believe it would still be difficult to do
16 so.

17 Q. Okay. And to further put a finer point on
18 that, what do you mean by difficult to do so?

19 A. Let me make sure that we're talking about the
20 same thing, just before I give you my answer --

21 Q. Certainly.

22 A. -- because we've -- we've been going on for
23 awhile. We're talking about after the -- after the term of
24 the stipulation and that it would be difficult to do so,
25 correct?

1 Q. Correct.

2 A. Okay. It would be difficult to do so because
3 this stipulation and agreement would no longer be effective.
4 And therefore that language would no longer -- I guess I'll
5 say apply, for lack of a better word.

6 Q. Okay.

7 A. And that's why I'm saying that -- that if --
8 if we're only talking about paragraph (j), then it would be
9 difficult for paragraph (j) to apply after the -- after the
10 -- after paragraph (j) is done applying.

11 Q. Okay. And other than paragraph (j), what is
12 it, in your opinion, that gives the Missouri Public Service
13 Commission the ability to set the transmission component of
14 bundled retail rates?

15 A. Are we talking about things that exist
16 currently or that could exist in the future?

17 Q. We're talking about things that exist
18 currently with the exception of -- of paragraph 10(j)?

19 A. With regard to things that exist currently
20 absent paragraph (j), I would say that the Commission would
21 retain jurisdiction over Ameren Missouri's -- I'll say
22 transmission component of the bundled retail rate when Ameren
23 Missouri builds. But other than that, it -- it, again, would
24 be difficult for the -- for the Commission. I cannot
25 identify another existing -- existingly effective item that

1 would permit the Commission to retain jurisdiction.

2 Q. And when you say --

3 A. Or full jurisdiction, sorry.

4 Q. And there you're referring to jurisdiction
5 over the transmission component of bundled retail rates for
6 transmission constructed by an entity other than Ameren
7 Missouri?

8 A. Yes. And I believe we are also -- well, I
9 can't say what you're referring to, of course, but I'm more
10 or less referring to constructed within the State of
11 Missouri. I have a hard time saying that the Missouri Public
12 Service Commission has a whole lot of jurisdiction -- and
13 that word's kind of tricky about what that word means -- but
14 as I understand that, it spans over transmission constructed
15 in other parts of regions where rates get passed through and
16 on to companies that then turn around and bill Missouri
17 consumers.

18 Q. Okay.

19 A. Or ratepayers.

20 Q. Okay. Now, do you believe that the condition
21 that's in paragraph 10(j) creates any significant financial
22 exposure for Ameren Missouri?

23 A. It would depend on how the Ameren
24 Corporation would financially, I'll say, allot, but that's
25 not a perfect word, for how that difference would be made.

1 I'm not sure if, you know, which part of the Ameren
2 Corporation financially would kind of assume that difference.
3 So I can't say for sure how that financial difference would
4 be applied. I don't know if it would go specifically to
5 Ameren Missouri or if it would go to another portion of the
6 Ameren Corporation.

7 Q. Okay. Given what you know about current
8 transmission projects and the time horizon when those will be
9 built and given what you know about the time that's set forth
10 in paragraph 10(j), regardless of how it is allotted to
11 Ameren Missouri or to another Ameren entity, do you believe
12 that there is a risk of significant financial exposure here?

13 A. It really depends on what projects an Ameren
14 affiliate builds versus Ameren Missouri, and it could rely on
15 some other factors as well.

16 Q. And what is your understanding of the -- the
17 projects that, in your opinion, are likely to move forward in
18 Missouri over the time horizon that's encompassed in
19 paragraph 10(j)?

20 A. The likelihood that I'm basing my answer on is
21 -- is based on, for example, Ms. Borkowski's testimony in
22 which they've set out some plans for Ameren Transmission
23 affiliates. I would say that the one project that is most
24 likely to attempt to be built by Ameren Transmission Company
25 would be the project that -- that Ameren has referred to in

1 its opening statement as the Mark Twain project, the
2 multi-value project going from Ottumwa to Adair and taking an
3 easterly turn and heading towards Palmyra.

4 Q. And Ms. Borkowski has some information in her
5 testimony and Mr. Lowery gave some information in his opening
6 statement about the costs of that project, correct?

7 A. Yes, they -- they both gave some -- some cost
8 information.

9 Q. Okay. Paragraph 10(b) of the non-unanimous
10 stipulation and agreement is the paragraph that generally
11 talks about the study to be conducted prior to the end of the
12 interim conditional approval extension that's being sought in
13 this case, correct?

14 A. That is the paragraph that discusses that,
15 yes. It discusses a few other things as well.

16 Q. Right. And with regard to that -- to that
17 study in general, is it your opinion that Ameren Missouri
18 should have an outside expert conduct that study?

19 A. I have issued that opinion before, yes.

20 Q. Is that your opinion still today?

21 A. That would be my preference, yes.

22 Q. Does the non-unanimous stipulation and
23 agreement require that?

24 A. I do not believe it does.

25 Q. Okay. The cost benefit analysis that was done

1 to support the application in the current case, would you
2 agree with the description of that as more of an update of a
3 previous study than a new study?

4 A. Yes, I would agree with that characterization.

5 Q. For the cost benefit analysis that's
6 envisioned in paragraph (b), would it be your opinion that
7 that study should be at least closer to a
8 starting-from-scratch study than an update of a current
9 study?

10 A. Within that continuum, yes, I would say it
11 should be closer to a starting-from-scratch study than just a
12 pure update.

13 Q. And does the non-unanimous stipulation and
14 agreement require that it be that sort of a study?

15 A. May I have a moment to review paragraph (b)?

16 Q. Certainly.

17 A. No, I do not believe that is specifically
18 required.

19 Q. Okay. Now, just in general terms, paragraph
20 10(b) allows Staff and OPC and perhaps some others to provide
21 input on how the study is designed and conducted, does it
22 not?

23 A. Yes. It does give some parties a substantive
24 input regarding the development of the specific methodology,
25 inputs, outputs, and other features.

1 Q. Other than the requirement that Ameren take
2 into consideration those comments in good faith, does it
3 impose any obligation on Ameren to incorporate those
4 suggestions?

5 A. Within the analysis that Ameren performs, no,
6 I mean, I believe that Ameren is able to maintain its
7 independence and control of the actual analysis as stated in
8 paragraph (b) in the non-unanimous stipulation and agreement.

9 Q. Now, I'm going to ask you a question that
10 refers to your rebuttal testimony and as well to -- to the
11 non-unanimous stipulation and agreement. But in your
12 rebuttal testimony at page 20, lines 6 through 8 -- I'm
13 sorry, are you there yet?

14 A. Yes, I am. Thank you.

15 Q. There you're talking -- you're referring to
16 the 2008 stipulation and agreement and you note that it
17 requires Ameren to discuss ways to mitigate risk and report
18 back to shareholders -- I'm sorry, stakeholders; is that
19 correct?

20 A. It does note that -- the stipulation itself
21 notes that Ameren Missouri is engaged in discussions and will
22 report back, and that's included in paragraph 15 out of the
23 2008 stipulation and agreement.

24 Q. Right. Does the -- the non-unanimous
25 stipulation and agreement that was filed in this case contain

1 a -- a similar provision?

2 A. I don't believe it does.

3 MR. MILLS: Judge, that's all the questions I
4 have.

5 JUDGE WOODRUFF: All right. We'll go to
6 questions from the bench. Mr. Chairman?

7 EXAMINATION

8 QUESTIONS BY CHAIRMAN GUNN:

9 Q. I'm not sure I have a lot of questions for
10 you. I think Mr. Mills took you through a lot of what-ifs,
11 what-ifs, and let me -- so let me ask you this: Under the
12 current time frame that the settlement -- that the joint
13 statement, I'll call it, the non-unanimous stip covers, under
14 the current governance of MISO, and the provisions of the
15 joint statement, are you comfortable that the Commission has
16 the ability, when necessary, to assert its jurisdiction over
17 transmission projects that potentially will be or are being
18 built in Missouri?

19 A. I would -- I would say yes. I would say that
20 if -- if Ameren Missouri builds it, we're going -- I'm sorry,
21 the Commission is going to have jurisdiction and my Staff
22 counsel's advice to me is that if an Ameren affiliate
23 attempts to build, then they're going to have to come in for
24 a CCN as well.

25 Q. And all of the jurisdictional questions and

1 the ability to do that would be a legal question, not a
2 economics question? Let me put it to you that way.

3 A. That's my understanding of how jurisdictional
4 questions work, yes.

5 Q. Do you agree with -- and I'm going to switch
6 topics here for a second. Do you agree with Ameren's
7 assertion and MISO's assertion regarding the voting structure
8 where it would -- there are hoops that you would have to jump
9 through in order to get Ameren Missouri to be the voting
10 member, and it may not make that much of a difference within
11 the current governance structure of MISO?

12 A. I do agree that there are hoops in the current
13 governance structure and there is the requirement in many of
14 the situations in which it's essentially one holding company,
15 one vote. And within the period of the stipulation, it may
16 be difficult to get that governance changed if that was your
17 -- if that was your question.

18 Q. And currently, under the current structure,
19 the Commission also has a vote, correct?

20 A. Yes. In many situations, yes.

21 Q. And there was some -- I was a little confused
22 about this. Does Office of Public Counsel have a vote in
23 those similar situations that the Commission would have a
24 vote?

25 A. I would say yes.

1 Q. And it's one. So the Commission vote and the
2 Office of Public Counsel vote are equal?

3 A. Yes, if I can give you a very brief example.
4 I know both the Indiana Commission and the Indiana Consumer
5 Advocate, whose name escapes me at the moment, both come and
6 participate in meetings, I believe both of them vote.

7 CHAIRMAN GUNN: All right. I don't have
8 anything further. Thanks.

9 JUDGE WOODRUFF: Commissioner Jarrett?

10 EXAMINATION

11 QUESTIONS BY COMMISSIONER JARRETT:

12 Q. Yes, good afternoon, Mr. McKinnie.

13 A. Good afternoon.

14 Q. There's been a lot of talk about the Arkansas
15 Orders 54 and 56, and particularly the provision where the
16 Arkansas Commission in Order 54 talks about Entergy
17 Arkansas's participation as an independent separate member,
18 voting member, of whatever RTO it joins.

19 My question is: Is there something unique
20 factually in the way energy is set up that has been operated
21 between Entergy Arkansas and Entergy Louisiana and Entergy
22 New Orleans that would cause the Commission to have concerns
23 about that?

24 A. I'm not aware of any, but that doesn't mean it
25 doesn't exist.

1 Q. Okay. Are you aware of any time when Entergy
2 Arkansas was required to make payments to Entergy Louisiana
3 or Entergy New Orleans that caused the ratepayers of Arkansas
4 to subsidize those other states and other entities?

5 A. I'm aware of that general situation.

6 Q. All right. And do you think that that might
7 have played into the Arkansas Commission's concern about
8 keeping Entergy Arkansas separate?

9 A. I could see the Arkansas Commission taking
10 that into consideration, yes.

11 Q. Now, would you have the same concerns about
12 Ameren Missouri, Ameren Illinois, Ameren Services, is there
13 anything in their structure or the way that they conducted
14 business in the past that would give you the same concern
15 that the -- that might occur with the energy situation?

16 A. I'm not sure it would be the same concern. I
17 might have a few -- a few questions, but I have a hard time
18 saying it's a hard and fast concern at this moment.

19 Q. Okay. What kind of questions would you have?

20 A. I guess I would have some questions regarding
21 the structure of an Ameren Company's response to capacity
22 market activities, for example, to try to figure out which
23 resources are going to be used where. Again, it matters a
24 whole lot in how the capacity market ends up, how MISO ends
25 up drawing resource zones, but I would at least have those

1 questions.

2 Q. Okay. So does that mean that if something
3 like that would happen as you described, would you see that
4 -- would you see that there would be a conflict between
5 Ameren Missouri and Ameren Services or Ameren Illinois?

6 A. There could be one. I would have a hard time
7 saying exactly what that conflict would be at this moment
8 just because of the fluidity of the capacity market
9 situation. It's -- it's really up in the air.

10 Q. Well, you know, based on your experience
11 working on these issues, would your concern or your
12 questioning rise to the level of the Missouri Commission
13 applying or attempting to apply a similar condition on Ameren
14 Missouri to -- to seek having a separate voting voice at
15 MISO?

16 A. I could see that occurring in a few limited
17 situations, but I can't identify off the top of my head a
18 situation in which Ameren Missouri's interest is going to be
19 massively different. There are certainly a few. I mean, I
20 look at things such as that we took care of in paragraph (j),
21 for example, where there's definitely a difference in -- in
22 -- if you take Ameren Missouri's interest into account and
23 kind of include its ratepayers, I think 10(j) definitely
24 addresses the situation in which there are different
25 interests.

1 I mean, I work under the assumption that
2 Ameren is pursuing other parties in Ameren Missouri to build
3 transmission amongst other reasons. I mean, there's a whole
4 -- there's a whole wide variety of reasons why that's
5 occurring, because they want to make money. I mean, they're
6 a corporation, that's why they exist. I'm not saying there's
7 anything wrong with that either. But it's just that their
8 interests might be a little bit different than Ameren
9 Missouri if you take into account interests would be.

10 Q. Right. I guess what I'm trying to get at is,
11 then, is at least -- you see at least theoretically that
12 there could be some conflict between Ameren Missouri and some
13 of the other subsidiaries, and so is it your testimony, then,
14 that the remedy would be in paragraph (j) where a party could
15 come back to us and say there's been a material change,
16 there's this conflict here, and have us look at the matter
17 again? Is that -- or?

18 A. There was a lot going on in that question.

19 Q. Yeah, I'm sorry.

20 A. Let me see if I can break it down. About
21 whether or not there could be a situation in which Ameren
22 Missouri might vote differently than the Ameren Services rep?
23 I can't rule that out, theoretically that could exist. If --
24 are you asking me whether or not the material change language
25 currently in the stipulation would address that?

1 Q. Well, I guess what I'm asking for is if that
2 -- if that were to happen --

3 A. Uh-huh.

4 Q. -- that -- that the voting entity at MISO,
5 Ameren Services votes in a way that's in conflict with Ameren
6 Missouri's best interests, what's the remedy?

7 A. Under this stipulation and agreement, unless
8 that vote caused a material change to make Ameren Missouri's
9 continued participation at MISO not detrimental to the public
10 interest, I'm not sure there would be one --

11 Q. Gotcha.

12 A. -- within this framework.

13 Q. Because, for example, it could be conflicting,
14 but it just may not be any detriment?

15 A. Yes, that's possible.

16 Q. Okay. Gotcha. Okay. Thank you.

17 COMMISSIONER JARRETT: No further questions.

18 JUDGE WOODRUFF: Commissioner Kenney?

19 EXAMINATION

20 QUESTIONS BY COMMISSIONER KENNEY:

21 Q. Mr. McKinnie, I just have a few questions.
22 The capacity construct, the resource adequacy construct
23 that's currently being considered at the FERC, in a
24 vertically -- in a predominantly vertically integrated
25 market, do you -- is it your opinion that there's any reason

1 for that type of capacity market?

2 A. I can't speak as to a Staff opinion because I
3 don't believe that Staff has fully gone through and developed
4 that opinion regarding the capacity market.

5 Q. Let me just have your opinion as an economist.

6 A. In my opinion as an economist, I -- I have
7 struggled to see the necessity for it.

8 Q. Okay. When you struggle to find a necessity
9 for it, you've been unable to find a necessity for it?

10 A. Yes, I -- I have not. And whenever I'm asked
11 that question, I -- I struggle to find the necessity and
12 within that struggle I have not seen a need in the vertically
13 integrated utility for that to exist.

14 COMMISSIONER KENNEY: Thank you. I don't have
15 any other questions.

16 JUDGE WOODRUFF: All right. Thank you.
17 That's all the questions from the bench, and we've been going
18 for over two hours so we need a take a break. We'll take a
19 break now and come back from lunch at 1:45.

20 (A lunch break was held.)

21 JUDGE WOODRUFF: All right. We're back from
22 lunch and we're back on the record. And Adam McKinnie is
23 still on the stand and we're ready for recross based on
24 questions from the bench. Anyone wish to do any recross?

25 MR. LOWERY: I just have a question or two.

1 JUDGE WOODRUFF: Okay. For Ameren.

2 RE-CROSS-EXAMINATION

3 QUESTIONS BY MR. LOWERY:

4 Q. Good morning, Mr. McKinnie.

5 A. Good afternoon.

6 Q. You were asked by Commissioner Jarrett some
7 questions about this Arkansas Order, Arkansas Orders 54 and
8 56, do you recall that?

9 A. Yes, I do.

10 Q. And you had a discussion with Mr. Gunn -- or
11 Commissioner Gunn about some of these issues as well. Given
12 the discussion you had with the Commissioner Gunn regarding
13 the voting structure that's in place at MISO, which I
14 understand you confirmed for Commissioner Gunn that
15 essentially what the company and MISO, how they described
16 that was from your perspective accurate; is that right?

17 A. Are you asking if my answer was accurate? I'm
18 sorry.

19 Q. I apologize. That probably wasn't a very good
20 question. You agreed when the company and MISO both
21 described the voting structure at MISO as essentially being
22 one vote, even if you have multiple subsidiaries in the same
23 holding company, you essentially have one vote. You agree
24 that that is how the MISO's voting structure works?

25 A. Essentially, yes. I mean, there are some

1 situations like PAC where you vote as a sector and things of
2 that nature, but essentially, it's one holding company, one
3 vote, for purposes of transmission ownership.

4 Q. Right. And you would agree, given that voting
5 structure, I assume, that even if the Commission were to be
6 thinking about or were to adopt Mr. Kind's sort of single
7 representation one vote condition that he's proposing, that
8 that would be difficult or perhaps impossible to actually
9 implement the MISO. Would that be accurate?

10 MR. MILLS: I object, leading.

11 MR. LOWERY: It is cross-examination.

12 JUDGE WOODRUFF: Overruled.

13 THE WITNESS: I would agree it would be
14 difficult to do so.

15 BY MR. LOWERY:

16 Q. Commissioner Jarrett also asked you some
17 questions, I think, about the Entergy situation and some
18 history involving Entergy and Arkansas and Louisiana. Do you
19 recall that?

20 A. Yes, I do.

21 Q. Would you agree that Ameren Missouri's
22 regulated generation is operated essentially separate -- or
23 entirely separate and apart from the unregulated generation
24 that's owned by Ameren Energy Resources of Illinois?

25 A. I'm not fully aware of how that structure is

1 set up.

2 Q. Okay. Fair enough. Would you agree that
3 there have been a lot of issues involving Entergy and the
4 Arkansas Commission over a long period of time involving the
5 allocation of costs from the Grand Gulf Nuclear Station
6 between Louisiana and Arkansas? Are you familiar with that?

7 A. I'm familiar that there have been a lot of
8 issues. I -- I would struggle to name them specifically.

9 Q. Do you -- do you have an opinion about whether
10 that history and those issues may have influenced the
11 Arkansas's Commission's decision to issue Order 54 in the
12 Entergy docket?

13 A. The Order at all or specific portions of the
14 Order?

15 Q. In particular the portions of the Order that
16 seek to sort of isolate Entergy Arkansas -- Entergy companies
17 in terms of participation in MISO.

18 MR. MILLS: I object. I think that calls for
19 speculation.

20 JUDGE WOODRUFF: I believe the question was in
21 your opinion or do you know.

22 MR. LOWERY: I asked does he have an opinion
23 about that.

24 JUDGE WOODRUFF: Okay. You can answer that
25 question as to whether you have an opinion, understanding

1 that you can't speak for the Arkansas Commission.

2 THE WITNESS: I have an opinion, yes.

3 BY MR. LOWERY:

4 Q. And what is that opinion?

5 A. Well, without having fully reviewed the case,
6 I can see how it would be an influencing factor, but I cannot
7 speak about whether or not it was dispositive or anything
8 else.

9 Q. All right. Thank you, Mr. McKinnie.

10 MR. LOWERY: Those are the only questions I
11 have.

12 JUDGE WOODRUFF: Okay. Mr. Mills?

13 MR. MILLS: Just a few.

14 RE-CROSS-EXAMINATION

15 QUESTIONS BY MR. MILLS:

16 Q. When you were -- and I think these were
17 questions from Chairman Gunn, but it may have been
18 Commissioner Kenney. You were talking about votes and the
19 fact that the Indiana Consumer Advocate and the Illinois
20 Commission have votes -- and I'm sorry, the Indiana
21 Commission have votes. Do you recall that?

22 A. Yes, I do.

23 Q. Votes in what sort of a voting group were you
24 talking about there?

25 A. It would probably be in some sort of advisory

1 situation. It would definitely not be one of them where it's
2 something like PAC -- I'm sorry, the planning activities
3 committee or the advisory committee where the votes are, I'll
4 say, rolled up by sector. It might be something like there
5 might be task force or the planning subcommittee or just --
6 any sort of those committees where it doesn't follow the one
7 holding company, one vote rule -- or no, I'm sorry, where it
8 does follow the one holding company, one vote rule, and it
9 does not roll up by sector.

10 Q. Okay. So there are some instances in which
11 the rules that govern voting are different than in other
12 instances?

13 A. Yes. The -- there are different rules for
14 different MISO committees or task forces or whatever you
15 would like to call the subgroupings of MISO.

16 Q. So there are instances in which consumer
17 advocates do not get an equal vote to transmission owners?

18 A. I'm not sure if I would agree with that
19 statement. I would have to -- to consider it. I know in the
20 -- when it's rolled up by sector, for example, that the --
21 the consumer advocates get the same vote as the transmission
22 owners and that it may be possible -- some other things may
23 be possible.

24 Q. Okay. Now you had some discussion with
25 Commissioner Jarrett about the hypothetical situation in

1 which a vote was taken and that the vote would have led to
2 detriment to Ameren Missouri and Ameren Missouri customers.
3 Do you recall that discussion?

4 A. I'm not sure if it involved -- oh, you just
5 mean detriments at all?

6 Q. Yes.

7 A. Yes, I do recall that discussion.

8 Q. And I believe, and tell me if I'm
9 mischaracterizing your answer, but was your answer to that
10 hypothetical that there -- there is no remedy for that
11 situation unless the detriment is severe enough that it
12 causes Ameren Missouri's participation in MISO to overall
13 become detrimental to the public interest?

14 A. I would say that -- yeah, I would say that's a
15 characterization of my response, yes.

16 Q. Okay. So there could be situations in which
17 the result of the vote causes some amount of harm to Missouri
18 customers but not enough harm to cause the entire
19 participation to be detrimental?

20 A. We discussed whether -- we discussed that
21 hypothetical situation, yes.

22 Q. And under that situation, there is no remedy
23 available under the non-unanimous stipulation and agreement,
24 correct?

25 A. I do not believe so, no.

1 Q. Okay. Now, regarding the possible conflicts
2 of voting at MISO, have you ever seen AEM or AEG or AER
3 employees in Carmel participating in MISO meetings?

4 A. I'm not sure what AEG is, but I have seen some
5 of the others, yes.

6 Q. Okay. Have you ever seen Ameren Missouri
7 employees at these same meetings?

8 A. Physically or by phone?

9 Q. Physically.

10 A. I do not recall somebody specifically
11 identifying themselves as an Ameren Missouri representative at
12 a MISO meeting that I have physically been at where they have
13 also been physically at.

14 MR. MILLS: Okay. That's all questions I
15 have.

16 JUDGE WOODRUFF: Okay. Any redirect?

17 MS. McCLOWRY: Yeah.

18 REDIRECT EXAMINATION

19 QUESTIONS BY MS. McCLOWRY:

20 Q. Mr. McKinnie, is there any other portion of
21 your rebuttal testimony that was effected by Staff's change
22 of position?

23 A. Yes, there is.

24 Q. Can you identify that portion of your
25 testimony for me?

1 MR. MILLS: Judge, I think I'm going to object
2 to this as being beyond the scope of any cross-examination.

3 JUDGE WOODRUFF: What is it?

4 MS. McCLOWRY: I'm just cleaning up his
5 testimony from the beginning, something we missed.

6 JUDGE WOODRUFF: So is it in response to any
7 testimony or any?

8 MS. McCLOWRY: It could be in response into
9 some of the questions asked about page 22.

10 JUDGE WOODRUFF: What's on page 22?

11 MS. McCLOWRY: They were the very beginning of
12 Mr. Mills's questioning.

13 MR. MILLS: Judge, I don't want to prevent the
14 Staff from -- from cleaning up his testimony if there's
15 something that has changed from the time he wrote it, but it
16 seems to me that this is just direct testimony that the Staff
17 didn't do on direct. And so if it elicits some new position,
18 I'd like the opportunity to cross-examine him based on it.

19 JUDGE WOODRUFF: All right. Is this going to
20 be any sort of a new position?

21 MS. McCLOWRY: No, it's not. It's exactly
22 what we deleted -- or changed from page 22, but we just
23 missed it at the end.

24 JUDGE WOODRUFF: All right. I'll overrule the
25 objection. If -- Mr. Mills if you to find anything

1 objectionable about this --

2 MR. MILLS: I'll be sure to let you know.

3 JUDGE WOODRUFF: Proceed.

4 THE WITNESS: On page 38 of my testimony --
5 I'm sorry, of my rebuttal testimony, lines 29 to 33. It's
6 essentially the summary of the same language that we made the
7 change to on page 22, lines 3 through 27. I'd just like to
8 say that on page 38, lines 29 to 33, they're no longer Staff
9 recommendations in this case.

10 MR. MILLS: Judge, I have no objection to
11 that.

12 JUDGE WOODRUFF: Okay. You may proceed.

13 BY MS. McCLOWRY:

14 Q. Mr. McKinnie, you were asked a lot of
15 questions about the stipulation and agreement earlier. And I
16 just want to ask: Do you assume good faith on behalf of the
17 company in carrying out the terms and conditions of the
18 stipulation and agreement?

19 A. Yes, I do.

20 Q. And is it still your position that the terms
21 and conditions of the non-unanimous stipulation and agreement
22 are not detrimental to the public interest?

23 A. Yes, that is still my position.

24 MS. McCLOWRY: I have no further questions.

25 JUDGE WOODRUFF: All right. Then

1 Mr. McKinnie, you can step down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: The next witness on my list,
4 then, is for MIEC, Mr. Dauphinais.

5 MS. ILES: MIEC calls James Dauphinais.

6 (The witness was sworn.)

7 DIRECT EXAMINATION

8 QUESTIONS BY MS. ILES:

9 Q. Would you please state your name and place of
10 employment for the record?

11 A. My name is James R. Dauphinais. That's
12 spelled D-a-u-p-h-i-n-a-i-s. I'm employed by Brubaker &
13 Associates, Inc.

14 Q. And Mr. Dauphinais, I handed you what has been
15 marked as Exhibit 14; is that correct?

16 A. Yes.

17 Q. And it's entitled rebuttal testimony and
18 schedule of James R. Dauphinais.

19 A. That's correct.

20 Q. Was this rebuttal testimony prepared by you or
21 under your direct supervision?

22 A. Yes, it was.

23 Q. And let me ask you: Was this testimony
24 prepared and filed before the MIEC entered into the
25 non-unanimous stipulation and agreement in this case?

1 A. Yes.

2 Q. And could you also tell us whether the
3 non-unanimous stipulation and agreement adequately addresses
4 the concerns you've raised in this rebuttal testimony about
5 Ameren Missouri's request for continued participation in the
6 MISO?

7 A. Yes, it does.

8 MS. ILES: Your Honor, I move for admission of
9 Exhibit 14 and tender the witness for cross-examination.

10 JUDGE WOODRUFF: All right. Exhibit 14 has
11 been offered, any objection to its receipt? Hearing none, it
12 will be received.

13 (Exhibit Number 14 was received into evidence
14 by Judge Woodruff.)

15 JUDGE WOODRUFF: For cross-examination, we
16 begin with Ameren.

17 MR. LOWERY: No questions, Your Honor.

18 JUDGE WOODRUFF: MISO?

19 MR. ZOBRIST: No questions.

20 JUDGE WOODRUFF: Staff?

21 MS. McCLOWRY: No questions.

22 JUDGE WOODRUFF: SPP?

23 MR. LINTON: No questions.

24 JUDGE WOODRUFF: Empire?

25 MR. COOPER: No questions.

1 JUDGE WOODRUFF: MJMEUC?

2 MR. HEALY: No questions.

3 JUDGE WOODRUFF: Public Counsel?

4 MR. MILLS: I do have just a few questions.

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. MILLS:

7 Q. Mr. Dauphinais, can you tell me from your
8 perspective what is the purpose of the non-unanimous
9 stipulation and agreement?

10 A. The purpose of the non-unanimous stipulation
11 and agreement, at least from the perspective of MIEC, is to
12 address the concerns that were presented in my rebuttal
13 testimony, specifically in regard to how -- with regard to
14 Ameren Missouri coming back at the end of the extended term,
15 back to the Commission for requesting an additional term, for
16 example, of the terms and conditions for that, including
17 provisions on studies that might be required at that time.

18 My rebuttal testimony called for restoration
19 of some of the provisions that were in Ameren Missouri's
20 original application in this proceeding. So that was a big
21 piece of it. And then concerns related to construction of
22 transmission facilities by Ameren Missouri affiliates in
23 Missouri.

24 Q. Okay. Now without getting into any of the
25 specifics of the settlement discussions, is it fair to say

1 that in this, like many settlement discussions, you didn't
2 get everything that you would have asked for, had you been in
3 charge?

4 A. It's a compromise.

5 Q. Okay. Does the non-unanimous stipulation and
6 agreement address in any fashion Mr. Kind's concerns about
7 Ameren Missouri participating in MISO through Ameren Services
8 as its representative?

9 A. The -- the non-unanimous stipulation and
10 agreement doesn't go to that, no.

11 Q. Okay. Would imposition of conditions similar
12 to the ones addressed by the Arkansas Commission in what's
13 been referred to as Order 54 be inconsistent with the
14 non-unanimous stipulation and agreement?

15 A. It would be inconsistent in that it would add
16 an additional condition beyond the non-unanimous stipulation
17 and agreement.

18 Q. Would it be inconsistent with any of the
19 specific provisions within the stipulation -- non-unanimous
20 stipulation and agreement?

21 A. Would it be compatible, I guess? Would it
22 nullify any of the other provisions? No. But again, it
23 would be going beyond what was in the non-unanimous
24 stipulation and agreement.

25 Q. Would it be contrary to what you've described

1 as the general purpose of the stipulation and agreement?

2 A. The purpose, again, from the perspective of a
3 -- perspective of MIEC, that was one of the concerns that was
4 raised.

5 Q. Tell me again what you believe the general
6 purpose of the non-unanimous stipulation and agreement is.

7 A. To -- from the perspective of MIEC, it's to
8 address the concerns I raised in my rebuttal testimony.

9 Q. And what was the basis for those concerns
10 generally?

11 A. The basis of those concerns was to address the
12 -- to ensure that Ameren Missouri's participation or extended
13 participation in the MISO was not detrimental to the public
14 interest.

15 Q. Okay. And would the imposition of conditions
16 similar to those suggested by the Arkansas Commission be
17 inconsistent with the protection of the public interest?

18 A. Not necessarily, but again, I don't recommend
19 that they're necessary at this time.

20 MR. MILLS: No further questions.

21 JUDGE WOODRUFF: All right. Questions from
22 the bench, Mr. Chairman?

23 CHAIRMAN GUNN: I don't have anything.

24 JUDGE WOODRUFF: Commissioner Jarrett?

25 COMMISSIONER JARRETT: I don't have any

1 questions.

2 JUDGE WOODRUFF: No need for recross. Any
3 redirect?

4 MS. ILES: No, Your Honor.

5 JUDGE WOODRUFF: Okay. Mr. Dauphinais, you
6 can step down.

7 The next name on the list is Mr. Doying.

8 MR. ZOBRIST: Judge, I was going to suggest
9 since Mr. Doying's testimony really is surrebuttal to
10 Mr. Vrbas and Mr. Wilson that they go first. Now, if that's
11 going to create some issues, I mean, I can put but Mr. Doying
12 on right now, but since Mr. Vrbas and particularly Mr. Wilson
13 is going to offer a number of critiques of capacity markets,
14 I think it would be more logical for them to go first and
15 they were scheduled to go today. Mr. Doying was actually
16 scheduled to go tomorrow but he was available today, so, you
17 know, whatever the Commission pleases.

18 JUDGE WOODRUFF: Any objection to that?

19 MR. HEALY: Well, I would prefer to Mr. Doying
20 to go first, but I do understand Mr. Zobrist's argument.

21 JUDGE WOODRUFF: We'll go ahead and take the
22 order of witnesses then.

23 MR. HEALY: Call Marlin Vrbas to the stand.

24 (The witness was sworn.)

25 JUDGE WOODRUFF: You may inquire.

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. HEALY:

3 Q. State your name, please.

4 A. Marlin J. Vrbas.

5 Q. And did you prepare rebuttal testimony in this
6 case which has been marked as Exhibit 16?

7 A. Yes, I did.

8 Q. Do you have any additional corrections to any
9 of that pieces of testimony?10 A. Only to the extent that there's been a
11 stipulation offered by Ameren since that time that wasn't in
12 consideration at that time. So there would be changes
13 relevant to that.

14 Q. Okay.

15 MR. HEALY: I'd offer Exhibit 16 into
16 evidence.17 JUDGE WOODRUFF: Exhibit 16 has been offered,
18 any objections to its receipt? Hearing none, it will be
19 received.20 (Exhibit Number 16 was received into evidence
21 by Judge Woodruff.)22 JUDGE WOODRUFF: And cross-examination, we
23 begin with Public Counsel.

24 MR. MILLS: No questions.

25 JUDGE WOODRUFF: All right. Staff?

1 MS. McCLOWRY: No questions.

2 JUDGE WOODRUFF: MIEC?

3 MS. ILES: No questions.

4 JUDGE WOODRUFF: SPP?

5 MR. LINTON: No questions.

6 JUDGE WOODRUFF: Empire?

7 MR. COOPER: No questions.

8 JUDGE WOODRUFF: MISO?

9 MR. ZOBRIST: No questions.

10 JUDGE WOODRUFF: Ameren?

11 MR. LOWERY: No questions.

12 JUDGE WOODRUFF: All right. No cross. Any

13 questions from the bench? Mr. Chairman?

14 CHAIRMAN GUNN: I was hoping for a little more

15 time, but thanks everybody.

16 MR. LOWERY: It's hard for you to count on us,

17 Judge.

18 EXAMINATION

19 QUESTIONS BY CHAIRMAN GUNN:

20 Q. Actually, I just want to get some clarity

21 here. One of the major concerns is that MISO is moving to

22 adopt and what your testimony is is a PJM-style capacity

23 market. But there is some pretty substantial differences,

24 correct?

25 A. That's what I understand, yes. I would say

1 that parts that we're concerned about have similarities, but
2 I understand the differences.

3 Q. And the tariff has not been approved yet?

4 A. That's correct.

5 Q. So the tariff is currently at FERC?

6 A. That's correct.

7 Q. So I guess this is maybe in the form of a
8 question, but wouldn't your concerns be better addressed at
9 FERC dealing with the changes to the capacity market that you
10 would like to see rather than in this particular proceeding?
11 Because if -- if -- if we impose certain conditions, even to
12 do a study on -- on what -- what the -- what the impact is to
13 the -- to the MJMEUC group, those changes would still need to
14 be addressed at the FERC rather than here.

15 A. Changes in the tariff, yes. That's not our
16 only concern, but if you're talking strictly changes in the
17 tariff, favorable or unfavorable, yes, those would have to be
18 addressed at FERC.

19 Q. All right. Thank you.

20 CHAIRMAN GUNN: I don't think I have anything
21 else.

22 JUDGE WOODRUFF: All right. Commissioner
23 Jarrett?

24 COMMISSIONER JARRETT: I don't have any
25 questions, thank you.

1 JUDGE WOODRUFF: All right. Any recross based
2 on those questions from the bench?

3 Any redirect?

4 MR. HEALY: No, Your Honor.

5 JUDGE WOODRUFF: All right. Then Mr. Vrbas,
6 you can step down. And you can call your next witness.

7 MR. HEALY: Call Mr. James Wilson.

8 (The witness was sworn.)

9 JUDGE WOODRUFF: You may inquire.

10 DIRECT EXAMINATION

11 QUESTIONS BY MR. HEALY:

12 Q. State your name, please.

13 A. James F. Wilson.

14 Q. Mr. Wilson, were you the person who prepared
15 testimony in this case that's been marked as Exhibit Number
16 17, rebuttal testimony?

17 A. Yes.

18 Q. Okay. And if you were asked those same
19 questions today, would you be giving the same answers here
20 under oath?

21 A. Yes, I would.

22 Q. Do you have any corrections to any of that
23 testimony?

24 A. No.

25 MR. HEALY: Move for the admission of Exhibit

1 Number 17.

2 JUDGE WOODRUFF: All right. Seventeen has
3 been offered, any objections to its receipt? Hearing none,
4 it will be received.

5 (Exhibit Number 17 was received into evidence
6 by Judge Woodruff.)

7 JUDGE WOODRUFF: Again, for cross-examination,
8 I'll just ask does anyone wish to offer any
9 cross-examination? All right. I see MISO. Go ahead.

10 MR. ZOBRIST: May I proceed, Judge?

11 JUDGE WOODRUFF: Yes.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. ZOBRIST:

14 Q. Mr. Wilson, let me direct your attention to
15 page 1 of your testimony. You state that you have been
16 involved in electricity restructuring and wholesale market
17 design in PJM, New England, Ontario, California, and Russia;
18 is that correct?

19 A. Yes.

20 Q. And you have not been involved in electricity
21 restructuring and wholesale market design in MISO?

22 A. Not those topics, not prior to this
23 proceeding.

24 Q. And you state at the bottom of page 1 that
25 you've been involved over the past several years with PJM

1 Interconnection, L.L.C. issues including the Reliability
2 Pricing Model; is that correct?

3 A. That's correct.

4 Q. And is it -- and you've also been involved in
5 capacity market issues in New England and California?

6 A. Correct.

7 Q. And is it correct that you've not been
8 involved in those capacity market issues as discussed at
9 Midwest ISO?

10 A. Correct.

11 Q. Okay. Now, on the basis of your involvement
12 in the PJM process, is it true that there are some state
13 commissions that have generally supported the PJM capacity
14 markets and other states that have opposed them?

15 A. Do you mean initially or changes that have
16 been proposed.

17 Q. I mean as it stands today.

18 A. Well, the question of supporting or not
19 supporting RPM as it stands today is a question that just
20 really doesn't arise.

21 Q. My question is: Are there states that support
22 the current PJM capacity market today?

23 A. I don't know. I mean, the only questions that
24 arise now are how it might be changed for the most part. The
25 whole question of do you support RPM in its entirety, I don't

1 think that really -- that question really arises very often,
2 so I wouldn't know what the positions are.

3 Q. Well, are you aware that Pennsylvania
4 Commissioner Wayne Gardner at the annual NARUC meeting in
5 St. Louis stated that he was a supporter of PJM's
6 capacity markets as they exist today?

7 A. Okay. Well, I don't -- I'm not aware of that.
8 I'm not sure what he means by that.

9 Q. So you didn't hear the speech or haven't seen
10 --

11 A. No.

12 Q. -- or recorded his comments at the annual
13 NARUC conference?

14 A. No, I didn't.

15 Q. Now, beginning on pages 28 and 29 of your
16 testimony, you speak to expectations that Midwest ISO
17 stakeholders might express on certain issues. Do you recall
18 that?

19 A. Yes.

20 Q. Now, what is the major MISO stakeholder body
21 that provides information and feedback to the MISO board and
22 management?

23 A. The major stakeholder? The name of the most
24 senior committee?

25 Q. Correct. What's the name of the major MISO

1 stakeholder body?

2 A. I'm not sure of the name of them. You mean
3 the most senior committee or the Board?

4 Q. No.

5 A. No, the stakeholders?

6 Q. No, stakeholders. What is the name of the
7 most senior stakeholder group at MISO?

8 A. I don't recall the name of the MISO group.

9 Q. What is the stakeholder group that has
10 provided advice and feedback to MISO management on resource
11 adequacy and capacity markets issues?

12 A. The supply adequacy working group.

13 Q. Have you ever attended a meeting of the supply
14 adequacy working group?

15 A. No, I haven't.

16 Q. Have you ever submitted comments on behalf of
17 either MJMEUC or any of its members to the supply adequacy
18 working group?

19 A. No, I haven't. I've informally discussed some
20 of the issues with various stakeholders, but I haven't
21 submitted anything.

22 Q. Okay. Now, at page 3 of your testimony, you
23 note that the MISO resource adequacy proposal has, quote,
24 some significant differences, closed quote, from the
25 PJM capacity market known as RPM, correct?

1 A. I haven't found it, but I believe I may have
2 said that, yes.

3 Q. And you don't have a crystal ball to be able
4 to tell the Missouri Public Service Commission which elements
5 of this proposal will be rejected and which will be accepted.
6 Is that fair to say?

7 A. I do not have a crystal ball, that's correct.

8 Q. Okay. And isn't it true that every element in
9 MISO's resource adequacy proposal has been accepted in at
10 least one of the other ISOs or RTOs that runs capacity
11 markets?

12 A. No, that's not correct.

13 Q. Okay. So what elements have been rejected by
14 FERC when proposed by another ISO or RTO that are in the MISO
15 resource adequacy construct?

16 A. Which ones have been rejected? You asked
17 accepted or -- or --

18 Q. I asked you isn't it true that every element
19 in the MISO resource adequacy construct has been accepted in
20 some form or fashion in another group and you said no, that's
21 not true.

22 A. Right.

23 Q. So I am asking you now which elements that are
24 in the MISO proposal have been specifically rejected by FERC?

25 A. Okay. Not -- you're not asking ones that have

1 never been proposed anywhere?

2 Q. I'm asking for elements in the MISO resource
3 adequacy proposal that have been rejected by FERC --

4 A. Okay.

5 Q. -- when proposed by another RTO or ISO.

6 A. Okay. Let me find my list to help me find my
7 list from the data request to help me to remember to go down
8 in a more organized fashion.

9 In a number of proceedings, stakeholders have
10 suggested various forward periods and FERC has approved three
11 years, FERC has approved one year, FERC has rejected various
12 proposals for other numbers. Similarly, vertical and sloped
13 demand curves, they've approved a slope, they've approved a
14 vertical, they've rejected various proposals to do either.

15 I'm not aware they've ever approved a maximum
16 auction clearing price equal to cone. I believe they have
17 approved higher on every case. They've never approved an
18 opt-out provision anything like what MISO has proposed.
19 PJM is much more restrictive, ISO New England doesn't have
20 one at all.

21 Q. Can I interrupt you there? Are you saying
22 that FERC has never approved an opt-out provision anywhere?

23 A. I said FERC has never approved an opt-out
24 provision anything similar to what you have proposed.

25 Q. But they have approved certain types of

1 opt-out provisions?

2 A. They have approved PJM's opt-out provision,
3 which is a minimum of five years, which is for the entirety
4 of a zone, which does not permit the entity to sell -- to
5 purchase any additional amounts from the market it might
6 seek. It does not allow that entity to sell any excess to
7 the market except under certain conditions, and according --
8 and subject to a threshold.

9 And I believe it probably has some other
10 characteristics that are different than MISO. It doesn't
11 allow opting out for partial requirements or for a single
12 year. Let's see. They've never accepted a minimum offer
13 price rule anything like yours, especially not in recent
14 time. They haven't recently accepted your threshold.
15 They've repeatedly rejected having anything in there that
16 required a finding of intent. They've recently rejected
17 having a requirement that there be some showing of a net
18 buyer. So let's see. They've never accepted a provision
19 that the capacity -- that -- a capacity price forecast
20 trigger that you have. They've never accepted a provision
21 that required a market surplus as you have in there. That's
22 -- that's some of the response to your question.

23 Q. Has FERC ever acted on a capacity market
24 resource adequacy construct for an ISO or RTO like Midwest
25 ISO that is dominated by traditional regulation and

1 vertically integrated utilities?

2 A. I don't know dominated by. You find that in
3 PJM, it's a smaller fraction, and you find that in New
4 England, it's a smaller fraction. California has a resource
5 adequacy construct that involves primarily bilateral coverage
6 of obligations by utilities, so there's some similarities
7 there. But every ISO is completely different.

8 Q. And you would agree that the majority of
9 states in the Midwest ISO region in the MISO footprint are
10 states with vertically integrated utilities?

11 A. Yes.

12 Q. Now, you stated that most of the states in the
13 PJM footprint, I believe you said are operating in
14 deregulated states; is that correct?

15 A. I didn't say that, no. You -- I didn't say
16 that.

17 Q. Is that true that most of the states in the
18 PJM footprint are deregulated and their commissions there do
19 not exercise traditional rate of return authority over
20 vertically integrated utilities?

21 A. Well, certainly if we megawatt-weight them,
22 yes.

23 Q. And I think you did say or agree with me that
24 most of the MISO states do follow this traditional model,
25 correct?

1 A. Correct.

2 Q. And on page 28 of your testimony, you spoke of
3 certain transmission owners who had left the MISO footprint,
4 do you recall that?

5 A. I think I mentioned one instance.

6 Q. And the companies that have moved from MISO to
7 PJM, those were utilities that were operating in deregulated
8 states, correct?

9 A. Yes.

10 Q. And so, for example, Duke Ohio left MISO to go
11 to PJM, but not Duke Indiana?

12 A. Correct, but I just would add that within
13 Ohio, you do have both types of utilities, vertically
14 integrated and not, at the present. So when you talk about
15 Ohio as a deregulated state, they, too, are kind of -- got
16 one foot in each camp.

17 Q. And the transmission owners who have -- the
18 large transmission owners who have joined MISO have come from
19 traditionally regulated states such as Mid-American and the
20 state of Iowa, primarily? Is that true?

21 A. Could you state that again, please?

22 Q. Yeah. The transmission owners who have joined
23 MISO in recent years, the large ones, have come from
24 traditionally regulated states, for example Mid-American
25 Energy that does business in the state of Iowa?

1 A. Okay.

2 Q. Is that correct?

3 A. As far as I know, yes.

4 Q. And the Entergy operating companies that are
5 proposing to join MISO, they're coming from traditionally
6 regulated states, correct?

7 A. That's correct.

8 Q. Now, have you conducted any evaluation of the
9 benefits in terms of the present value for Ameren to continue
10 its participation in MISO?

11 A. No, I haven't.

12 Q. Have you done any research with regard to MISO
13 stakeholders, how they have voted in the supply adequacy
14 working group or in the advisory committee on capacity
15 markets issues?

16 A. I've reviewed minutes of some of the meetings
17 and I've reviewed comments in the FERC proceeding.

18 Q. And isn't it true that most of the
19 stakeholders have expressed support for the MISO capacity
20 market as opposed to the current PJM capacity market
21 construct?

22 A. I can't necessarily agree with that and I'm
23 not sure how you summarize stakeholders to be able to say
24 most, and I was focusing more on comments on particular
25 elements, so I can't really agree to that.

1 Q. Okay. So -- but you haven't done any study of
2 -- of where the votes were cast, either at the supply
3 adequacy working group or at the advisory committee?

4 A. No.

5 Q. In any event, you have concluded and stated in
6 your testimony at page 29 that MISO's proposed minimum offer
7 price rule is much more reasonable than PJM's?

8 A. Yes, as proposed, yes.

9 MR. ZOBRIST: Thank you, that's all I have,
10 Judge.

11 JUDGE WOODRUFF: All right. Come up for
12 questions from the bench. Mr. Chairman?

13 CHAIRMAN GUNN: Just a couple quick questions.

14 EXAMINATION

15 QUESTIONS BY COMMISSIONER GUNN:

16 Q. Are you familiar with the joint stipulation?

17 A. Yes, a little bit.

18 Q. So what we've been talking a lot about here
19 and what is kind of a theme through your -- your testimony is
20 that you're not so much worried about -- or I shouldn't --
21 and you can feel free to respond to this characterization
22 that the MISO tariff as proposed for the capacity market is
23 better than PJM, but you're worried that it's going to
24 migrate over to look more like the PJM market before it
25 ultimately gets approved by FERC?

1 A. Well, to clarify, I think even a capacity
2 market has -- MISO as proposed has some risks.

3 Q. Sure.

4 A. I am very highly confident that FERC will
5 approve something different from what was proposed, whether
6 the tweaks are six or twelve or four or eighteen, I don't
7 know. But I'm very confident that they will at least tweak
8 what's been proposed.

9 Q. And by different, your assumption is that that
10 will be closer to the PJM market and farther away from what
11 -- what's originally proposed currently?

12 A. Well, it will be -- it will be different from
13 what's currently proposed. It's likely that it will be more
14 like PJM's RPM. But I think it will be in the directions of
15 various FERC policies that they've been very clear about and
16 which will make it even more problematic from the perspective
17 of evaluating it from the standpoint of interests of Missouri
18 consumers.

19 Q. Right, they're not going to change it and make
20 it better, in your opinion. I mean, in your opinion, the
21 changes that FERC will make based on current FERC policies
22 aren't going to make it any better in your mind?

23 A. I think it will be in the direction of higher
24 capacity prices, a larger role for the capacity market, and
25 yes, more risk of the kinds of things that have happened at

1 RPM in PJM with RPM.

2 Q. Well, wouldn't, then, that approval or those
3 changes fall under 10(a) of the stipulation that would cause
4 a material change that -- that it would be a material change
5 that would cause a substantial risk that we could now be
6 looking at something detrimental to the ratepayer which would
7 allow us then to come back and take a look at it again to see
8 whether those changes were so bad that we needed to pull
9 Ameren out of MISO? Wouldn't we have that ability under --
10 under the conditions that are contained in the stipulation
11 and agreement?

12 A. I haven't really evaluated that, and I don't
13 know how you would judge, you know, or interpret material
14 change. I mean, these capacity constructs have many, many
15 provisions. For the most part, we don't always know what to
16 expect from the performance until it happens. So sometimes
17 they put provisions in there and they seem okay and then
18 boom, the auction's held and everybody's surprised by the
19 result. So I don't -- I can't really agree with that,
20 because I don't know how you would interpret it.

21 Q. But isn't that precisely why this provision is
22 in here, because we don't know what's going to happen and we
23 allow -- and we allow for when something that at the time we
24 don't really realize is going bad but then it does, we have a
25 provision in here that says any stakeholder, including

1 MJMEUC, can come in and say this is -- this is not going the
2 way anybody thought, it's really bad, you need to open up a
3 docket to take a look at -- and if you're not familiar --

4 A. No.

5 Q. -- with this provision, I'm not going to force
6 you to take an opinion. But I mean, that's kind of what this
7 material change provision is supposed to anticipate, isn't
8 it?

9 A. Okay. I mean, the damage will likely already
10 have been done when you would exercise that provision, I
11 think.

12 Q. And there's no corresponding danger in now
13 saying we are going to pull Ameren or not allow Ameren to
14 continue in MISO the way it is because MISO separately apart
15 from our jurisdiction has a tariff at FERC that -- that -- so
16 we're -- and we don't know what it's going to look like, but
17 we're not going to allow these guys to continue as they are
18 right now?

19 A. Now you're outside of my scope. My scope is
20 to help you understand how this capacity construct might
21 effect Missouri.

22 Q. I understand. But you just said that at that
23 time, the danger has -- has occurred, the damage has already
24 been done.

25 A. Uh-huh.

1 Q. So you're saying that you don't have any
2 measure, then, or no way of saying what the damage would be
3 to -- to not continue to allow MISO -- or Ameren to continue
4 in MISO?

5 A. No, I haven't evaluated any other scenarios.

6 Q. Okay. Thank you.

7 CHAIRMAN GUNN: I don't have anything else.

8 JUDGE WOODRUFF: Commissioner Jarrett?

9 EXAMINATION

10 QUESTIONS BY COMMISSIONER JARRETT:

11 Q. Good afternoon, sir. Excuse me. I just had
12 one question. Could you address, I guess, Ameren's position
13 that even if they didn't have the opt-out or the
14 self-scheduling provision, since Ameren's going to be long in
15 the period that -- that we're dealing with here in this case,
16 it's not going to matter?

17 A. Okay. Well, they are -- under their forecast,
18 they are going to be long. I guess there is some question
19 about whether they will remain long if they, for instance,
20 decide to retire some coal plants and there have been a lot
21 of analyses suggesting that a lot of coal in the MISO region
22 will be retired in the coming years.

23 So if they were to retire, they wouldn't be
24 long and if they were to retire some plants and have to buy
25 in the market, then all of a sudden their customers would be

1 exposed to the capacity market.

2 And this might be called speculative, but
3 exactly this is what has just happened in PJM in the
4 FirstEnergy's ATSI's zone, ATSI, the FirstEnergy company that
5 joined PJM June 1, 2011. They've been part of the broader
6 and unconstrained rest of PJM RTO region where capacity
7 prices were very low, similar to MISO prices.

8 They -- so the prices in that part of northern
9 Ohio were at low levels, like under \$30 per megawatt day in
10 2012 and 2013. They rose to about 125.99 in 2014 as a result
11 of a lot of coal plants starting to offer into RPM at prices
12 that reflect some of their anticipated EPA compliance costs.

13 And just recently, PJM released the model
14 structure, the planning parameters for the next auction in
15 May for the 2015, 2016 delivery year. And in those planning
16 parameters, they've now defined ATSI, the northern Ohio
17 FirstEnergy affiliate, as a separate zone for RPM purposes,
18 which allows that zone to have a separate price.

19 More or less simultaneously, FirstEnergy
20 announced a retirement of 2,000 megawatts within that zone,
21 which reduces the capacity available to the zone. The loss
22 of that capacity also has impacts on reactive power, which
23 has lowered the capacity import limit to that zone.

24 And when I add up the capacity available to
25 that zone in the zone plus demand response plus imports into

1 that zone, it looks very much like that zone's going to pay
2 the maximum possible RPM price of \$537.33 in May. So they'll
3 have gone from sixteen and change to twenty-seven and change
4 to one twenty-six, and very likely it appears from what I've
5 seen, to 537 because they've created a zone just for that
6 capacity.

7 So I think the possibility that there's
8 retirements in MISO, that that creates the potential for
9 constraints, the potential for constraints results in the
10 definition of a zone, and the definition of a zone causes
11 prices to go very high. I think that's very real in MISO
12 just as it was in PJM.

13 Q. Thank you, Mr. Wilson.

14 COMMISSIONER JARRETT: I don't have any
15 further questions.

16 JUDGE WOODRUFF: Commissioner Kenney?

17 EXAMINATION

18 QUESTIONS BY COMMISSIONER KENNEY:

19 Q. Mr. Wilson, thank you. So you've studied the
20 reliability pricing model in PJM?

21 A. I have.

22 Q. And that's -- and that's just another way of
23 referring to a capacity market, right?

24 A. Yes.

25 Q. Okay. And MISO calls its capacity market the

1 resource adequacy requirement construct?

2 A. Yes.

3 Q. Okay. Can you explain to me why -- I mean --
4 let me ask you this: Is it your opinion in a vertically
5 integrated state there's no need for a capacity market of any
6 sort?

7 A. I think there's no need. There are other
8 approaches. It can be one effective mechanism, but there are
9 certainly other approaches and it's not necessary, I agree.

10 Q. An effective mechanism of accomplishing what?

11 A. Accomplishing any additional acquisition of
12 capacity that might be needed to assure resource adequacy at
13 -- at both the zonal and the RTO level.

14 Q. And what are some of those other mechanisms,
15 because that's -- that's the reason for MISO's filing of the
16 resource inadequacy requirement was in response to a FERC
17 order regarding locational resource adequacy?

18 A. Yes.

19 Q. So what are some of those other mechanisms?

20 A. Well, MISO already had a mechanism in place.
21 I think its main flaw was it wasn't locational. And they
22 have proposed to determine locational obligations. So that's
23 essentially the first step is to identify locational
24 obligations and to assign those to load serving entities.

25 Now, whether you go beyond that or not to have

1 a capacity market, that's pretty much optional. Once those
2 load serving entities have those obligations, they can be
3 left to satisfy them on their own, and as long as you have
4 appropriate consequences and penalties in place, I think that
5 can be an adequate mechanism.

6 Q. So there are administrative measures that can
7 serve to satisfy those locational requirements, to penalties
8 or?

9 A. Well, I guess, yes, you could call that
10 administrative. I mean, if you have -- if you have clearly
11 assigned the obligations and you have appropriate
12 consequences for failing to fulfill the obligations, I think
13 you can be fairly confident that the obligations will be
14 fulfilled.

15 Q. Can you explain what are the distinguishing
16 characteristics between vertically integrated states and
17 restructured or unregulated states that make a capacity
18 market appropriate in the restructured states but not in the
19 vertically integrated state?

20 A. Well, when this began around 2003, the notion
21 of a capacity market, when there was a lot of excitement
22 about restructuring, when load growth was a lot stronger than
23 it is today, when you looked around the country and you saw a
24 lot of gas-fired, combined cycle, and combustion turbines
25 being built, and a lot of states that were undergoing

1 restructuring, there was the hope that there would be, you
2 know, vigorous competition to build, to maintain -- that
3 existing capacity would be maintained and there would be
4 vigorous competition to build new, low-cost, gas-fired
5 capacity in order to compete in the restructuring retail
6 markets.

7 And so states like New Jersey and Pennsylvania
8 thought that they could restructure, they could have these
9 competitive standard offered service auctions and there would
10 be a lot of competition to build a new generation to satisfy
11 that demand. This is more like 2003, 2004.

12 And what we've seen over time is that, in
13 fact, places like New Jersey and Maryland, there's been
14 basically no new capacity built despite eight delivery years
15 under RPM. What's happened instead is load forecasts have
16 been reduced, new transmission has been built, and mainly
17 there's been a huge increase of demand response. Demand
18 response essentially being industrial customers saying these
19 capacity prices are too high. I'm not -- I'm going to accept
20 a reduction in service rather than pay these high prices.

21 Q. Is that a market failure or is that just,
22 like, unanticipated circumstances?

23 A. Market failure that?

24 Q. That there was no new generation being built,
25 no new capacity being built.

1 A. Well, it's a combination. I mean, if you look
2 at the nature of RPM, it only offers a one-year commitment.
3 So the types of resources, both incremental and decremental
4 resources, for whom a one-year commitment can be, you know,
5 decisive, like an existing plant upright, like doing what you
6 need to do to offer demand response, like unmothballing a
7 plant, like delaying a retirement one year. RPM has
8 influenced those sorts of decision, and over 80 percent of
9 according to PJM's tally of the capacity that RPM has
10 influenced, the incremental capacity or the, you know, not
11 decremental capacity, delayed retirements, over 80 percent is
12 that sort of capacity, the small, low-investment, short lead
13 time, and short duration investments and decisions.

14 Q. Essentially what can be accomplished in a
15 year?

16 A. And the kind of things that, you know, a
17 one-year price can influence.

18 Q. Right.

19 A. But the sort of 20-year resources, the brand
20 new power plants, it really doesn't and can't. A one-year
21 price isn't going to influence those decisions. And you
22 haven't seen it. And so Maryland and New Jersey continue to
23 have very high RPM prices and they're kind of getting by year
24 to year on demand response, fortunately unlowered forecasts,
25 plant uprights, delayed retirements.

1 So, you know, a lot of older plants that
2 really should have been replaced by newer, more efficient,
3 cleaner plants, they're still running because high RPM prices
4 keep -- keep them going.

5 I mean, the normal process in this industry is
6 people build new plants, new more efficient plants, and when
7 those plants come online, the prices drop and the old plants
8 get the message and retire. But the way we've got it wired
9 now with the minimum offered price rule, you can't build that
10 new plant until the price rises, so you're waiting for the
11 old plant to retire first and then you'll be able to clear
12 and build the new plants. So we've kind of got it backward
13 now.

14 Q. And are -- are there enough similarities
15 between PJM's construct and MISO's proposal that you can draw
16 any type of -- or you can make any type of predictions about
17 the success of it, of MISO's?

18 A. Well, as proposed, it's fairly benign. It has
19 the MOPR provision, the minimum offer price rule provision
20 has a lot of features that would really limit it to cases
21 where somebody really is trying to manipulate the market,
22 unlike in PJM. You have the self-supply and the very
23 flexible opt-out. So you have provisions that make it very
24 benign and I don't, you know, see it very problematic.

25 Q. Because of those provisions though?

1 A. Yes.

2 Q. Okay.

3 A. But first of all, as I said before, it isn't
4 going to get approved as filed.

5 Q. And that's a good segue into my next question.
6 You made a prediction that FERC was going to make significant
7 changes, and so I have two questions. The first one is upon
8 what do you base that assertion that FERC is going to make
9 significant changes, and then what are the significant
10 changes that FERC is going to make?

11 A. Yeah, good question. MISO is different. So
12 to the extent the FERC can look at a provision and what's
13 been proposed in MISO and it's different from what's in
14 RPM and in FCM that they've approved elsewhere. If they can
15 point to some difference about MISO, then they can
16 potentially, you know, accept that and not have been
17 inconsistent in their policies. So some of the provisions
18 can probably go that way.

19 But when it comes to the minimum offered price
20 rule, for instance, it used to be that those rules were about
21 preventing net buyers, entities that could benefit from
22 lowering capacity prices, from taking actions that were
23 deliberately intended to lower prices. It used to be it was
24 a -- which is considered an exercise of buyer market power.

25 Q. Uh-huh.

1 A. It used to be it was a provision both in New
2 England and in PJM intended to thwart that sort of
3 manipulation of the market, okay? But around 2008, starting
4 in New York, FERC's policy changed fundamentally and
5 completely. And now those rules, even though there's still
6 an awful lot of talk about buyer market power and
7 manipulation, those rules have the fundamental purpose of
8 preventing what is deemed uneconomic entry, okay?

9 And by uneconomic entry, they take your
10 levelized cost to enter net of market earnings and they
11 compare that to the market price and if it's -- if it's
12 lower, then that's considered economic. But if it's not,
13 you're considered uneconomic. So what I would normally
14 consider to be a competitive offer, if a merchant generator
15 wants to build a new gas-fired plant, he's sure he wants to
16 build it, he's got the best project, he's got the best
17 location and he wants to get a capacity payment, if someone
18 were to say, wow, he made a competitive offer, I would
19 understand that to mean he made a low, aggressive offer
20 because he wanted to win a capacity obligation.

21 Q. Right.

22 A. But under FERC's new concept and new parlance,
23 a competitive offer is one that basically a long-run average
24 cost, and anything less than long-run average cost is not
25 allowed. They want their preventing economic entry because

1 they want to get capacity prices up because they believe that
2 RPM isn't doing what Maryland and New Jersey wanted to do
3 because prices have been too low, at least that's their view.

4 Q. So by elevating prices, they think that that
5 will ultimately incent the building of new generation?

6 A. They do still believe that.

7 Q. That's the theory?

8 A. Yes.

9 Q. Okay. All right.

10 COMMISSIONER KENNEY: I don't have any other
11 questions. Thank you.

12 JUDGE WOODRUFF: Any recross based on
13 questions from the bench?

14 MR. ZOBRIST: Just one or two, Judge.

15 JUDGE WOODRUFF: Go ahead.

16 RECROSS-EXAMINATION

17 QUESTIONS BY MR. ZOBRIST:

18 Q. Mr. Wilson, have you filed any testimony on
19 behalf of MJMEUC at FERC in the MISO resource adequacy
20 construct proposal?

21 A. No, I haven't.

22 Q. Are you aware of any other witness on behalf
23 of MJMEUC who has filed comments or testimony in opposition
24 to the MISO resource adequacy proposal?

25 A. No.

1 MR. ZOBRIST: Thank you, Judge.

2 JUDGE WOODRUFF: All right. Redirect?

3 MR. HEALY: None.

4 JUDGE WOODRUFF: All right. Then Mr. Wilson,
5 you can step down. Let's go ahead and bring up Mr. Doying,
6 then.

7 MR. ZOBRIST: MISO calls Richard Doying to the
8 stand.

9 (The witness was sworn.)

10 JUDGE WOODRUFF: You may inquire.

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. ZOBRIST:

13 Q. Please state your name for the record.

14 A. Richard Doying.

15 Q. And by whom are you employed?

16 A. MISO.

17 Q. And what is your position there?

18 A. Vice-president of operations.

19 Q. Now, Mr. Doying, have you caused to be
20 prepared surrebuttal testimony that has been premarked as
21 Exhibit Number 15?

22 A. I did.

23 Q. And do you have any corrections or changes to
24 your testimony?

25 A. No, I do not.

1 Q. And if I were to ask you the questions set
2 forth in the surrebuttal testimony, would your answers be as
3 set forth in Exhibit 15?

4 A. Yes, sir, they would. Karl, I'm sorry, you
5 asked if there were changes, I forgot I did have one.
6 There's a typographical error on page 2. About midway
7 through the paragraph, it's related to when I started my
8 employment at MISO, and it was in December of 2002 and the
9 written document says 2003. So it's a minor change, but it
10 was an error.

11 MR. ZOBRIST: And Judge, for the record,
12 that's page 2, line 7.

13 THE WITNESS: Line 7.

14 BY MR. ZOBRIST:

15 Q. Any other changes, Mr. Doying?

16 A. No.

17 MR. ZOBRIST: Your Honor, I offer Exhibit 15
18 into evidence at this time.

19 JUDGE WOODRUFF: Fifteen has been offered, any
20 objections to its receipt? Hearing none, it will be
21 received.

22 (Exhibit Number 15 was received into evidence
23 by Judge Woodruff.)

24 MR. ZOBRIST: Tender the witness for
25 cross-examination.

1 JUDGE WOODRUFF: Thank you. For cross, we go
2 to Ameren.

3 MR. LOWERY: No questions.

4 JUDGE WOODRUFF: MJMEUC?

5 MR. HEALY: Just a few questions, Judge.

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. HEALY:

8 Q. Mr. Doying, how are you doing this afternoon?

9 A. Doing well, thank you.

10 Q. In your testimony, you stated that Missouri's
11 somewhat of an anomaly on how much authority it asserts over
12 Ameren's participation in MISO; is that correct?

13 A. Could you direct me to where in my testimony
14 that you're referring to?

15 Q. Page 3, line 20.

16 A. Yeah, I believe that I did say it was
17 different. I'm not sure I said it was an anomaly, but I did
18 say that it was unique.

19 Q. That was my word, I apologize. But it is
20 unique, you would agree with that?

21 A. Yes, sir.

22 Q. Okay. Do you believe that uniqueness gives
23 Missouri maybe a little bit more say or sway than maybe some
24 other states that don't have that ability?

25 A. To the extent I understand the proceeding, it

1 appears to give the state more oversight --

2 Q. Okay.

3 A. -- in terms of participation.

4 Q. Page 9 of your testimony, you briefly
5 discussed PJM. And to make sure I'm clear, you did say that
6 PJM RPM prices are volatile in nature, correct?

7 A. Again, if you could refer me to the line.

8 Q. Sure, line 10, page 9.

9 A. I think I'm actually referring to the
10 testimony of others.

11 Q. Oh, okay.

12 A. I indicate that other people have said that
13 they're volatile.

14 Q. Okay. You're correct. Do you believe that
15 PJM RPM prices are volatile?

16 A. I agree they change from year to year. I
17 guess it depends on precisely how you're defining volatility.
18 I'm not trying to be evasive, but only noting that it is a
19 market and economic term and depending on whether or not
20 you're using a colloquial term or a specific-defined market
21 term, the answer would be either yes or no.

22 Q. I understand. Did you have an opportunity to
23 review Mr. Wilson's testimony?

24 A. I did.

25 Q. Okay. One of his exhibits indicated that

1 there's no zone in site of PJM that's moved in the same
2 direction for more than three years. Did you look at that
3 exhibit?

4 A. I don't recall reviewing that, no.

5 Q. Okay.

6 A. I may have seen it. I don't recall.

7 Q. Would that surprise you if that was the case?

8 A. No, it would not.

9 Q. Going to the current tariff on file at FERC,
10 what's an LRZ?

11 A. Local resource zone.

12 Q. Okay. And have these zones been proposed yet
13 by MISO?

14 A. There's been analysis performed to come up
15 with a preliminary set-up zone. Having them proposed, it's a
16 -- it's a valuation that has come up with a set of answers
17 that will be defined over time.

18 Q. Okay. But the current suggestions or where
19 we're at currently, did it mainly reflect traditional LVAs?

20 A. They do. They -- there are several
21 considerations. The primary one being transition constraints
22 on the system, but they do also attempt to conform with
23 current utility boundaries as well as state boundaries to
24 reflect jurisdictional differences, for example, here between
25 two different operating companies under Ameren.

1 Q. Let me just ask you hypothetically, if Entergy
2 Arkansas does join MISO, would you expect Arkansas to be its
3 own LRZ?

4 A. I would have no basis to have an opinion. It
5 would be subject to an engineering study based on
6 transmission transfer capability down there, and I simply
7 don't have enough information to speculate.

8 Q. Okay. Are you familiar with the grandmother
9 provisions of the current tariff?

10 A. When you say "current," I believe you're
11 referring to currently before FERC?

12 Q. Yes, I am.

13 A. Yes, I am.

14 Q. Okay. If a new zone or new area was added,
15 such as Entergy Arkansas, would those grandmother provisions
16 apply to existing loads inside of Arkansas being exported to
17 other zones?

18 A. Yes, I -- let me try to answer and restate the
19 question to make sure I'm answering the question you asked.
20 I believe that existing arrangements for transmission and
21 transactions, movements of capacity outside of Arkansas to
22 other zones, would that be included as qualifying for
23 grandmother treatment? Yes, I believe it would.

24 Q. Okay. Thank you. Are you familiar with the
25 phrase NITS charge?

1 A. Yes, I am.

2 Q. What's NITS?

3 A. Network integrated transmission service.

4 Q. Okay. And don't customers basically pay that
5 depending on which NITS zone they're inside of?

6 A. Load pays that, based on which zone they're
7 within, that's correct.

8 Q. Thank you. That's a good clarification. Load
9 does.

10 What's that charge designed to compensate? Or
11 who does it compensate and why, I guess, is the question?

12 A. Sure. It's based on the revenue requirement
13 of the transmission owner in that zone and it's intended to
14 collect -- recover the costs associated with their
15 investments.

16 Q. What does it entitle the load to receive in
17 exchange for that payment?

18 A. They receive transmission service for the
19 ability to -- to purchase energy to serve the load within
20 that zone.

21 Q. But the RAR construct that's filed at FERC, it
22 doesn't look at the availability of NITS service, does it,
23 when computing the CIL, the capacity import limit?

24 A. I'm not sure I understand the question.

25 Q. You're familiar with what CIL stands for?

1 A. Yes.

2 Q. What does that stand for?

3 A. The import limit.

4 Q. Okay. The tariff that's on file at FERC
5 waiting approval, when determining capacity import limits,
6 does it take a look at if the people who are looking for that
7 importability are already paying for NITS service?

8 A. It does in that the entities that would be
9 eligible to participate -- actually, I take that back, the
10 people that are responsible for demonstrating adequacy with
11 their load forecast are the loads, and those are the same
12 entities that are taking network integration transmission
13 service, so they are -- they're one in the same entities.

14 Q. They're one in the same entities, but the
15 calculation of CIL doesn't take into consideration if a NITS
16 charge is being paid; is that true?

17 A. Sure, the import capability is a physics-based
18 analysis based on the transfer capability of the system and
19 it has no relationship to transmission service payments that
20 are based on cost-recovery mechanisms. They're a physical
21 and a -- and a charge or rate charge.

22 Q. Okay. And it's helping me understand that. I
23 appreciate that explanation.

24 So to make sure I got it clear in my mind,
25 even if you're paying NITS service, that doesn't entitle you

1 to be able to deliver capacity and import it across the same
2 transmission network; is that correct?

3 A. It's difficult to ask the question as you
4 phrased it, so let me try to answer it and I'll see if I am
5 responsive to your question.

6 Q. Sure.

7 A. It entitles you to be able to point or
8 designate any resource on the system towards satisfaction of
9 your reserve obligation on the system. So yes, it does
10 provide you the ability to -- to point to capacity, move
11 capacity, I think was the word you used, which is part of
12 what made it difficult to answer. I wasn't sure what you
13 meant by that.

14 Q. Well, usually when you're looking at NITS,
15 you're assuming moving energy, correct?

16 A. That's correct.

17 Q. And I guess my question, and you may have just
18 answered it, and if you have, you can tell me you have. But
19 I guess the question I was trying to get to is just because
20 you're paying your NITS charge does not entitle you to also
21 receive capacity to the same zone; is that correct?

22 A. No, it does give you the same ability.

23 Q. Okay.

24 A. It's very analogous to energy.

25 Q. Just speaking generally, hasn't FERC

1 prohibited pancake rates inside of RTOs?

2 A. Yes, they have.

3 Q. What's a ZDC?

4 A. Zonal distribution charge, I believe it's
5 distribution. I'll have to refer back to the tariff
6 appendix.

7 Q. Maybe zonal deliverability charge?

8 A. There you go. Thank you very much. I see you
9 have Dr. Saffer [as pronounced] behind you -- beside you. I
10 appreciate that.

11 Q. He's very helpful. Would it be fair to say
12 that you do not consider a ZDC to be a pancake rate?

13 A. Oh, no, not at all. I would not consider it
14 to be that any more than a difference in a locational
15 marginal price is a -- is a transmission fee. It's a market
16 charge.

17 Q. Is it possible if we had some new -- let's
18 just hypothetically speak -- some environmental rules that
19 caused generation within MISO to be retired at a much faster
20 rate than what was previously thought, would that encourage
21 MISO to change the current capacity tariff to encourage new
22 generation to be built to replace the retiring fleets?

23 A. No, I don't believe so.

24 Q. And why not?

25 A. The primary responsibility for resource

1 adequacy in the MISO region is the -- are the state
2 commissions who ultimately have responsible [sic] for
3 ensuring that there is capacity resource -- demand response
4 resources that are available to meet load. Our -- the MISO
5 resource adequacy mechanism under modulely, today or as
6 filed, compliments. It doesn't replace that mechanism.

7 MR. HEALY: That's all the questions I have.
8 Thank you very much.

9 JUDGE WOODRUFF: All right. MIEC wish to
10 cross?

11 MS. ILES: No, Your Honor.

12 JUDGE WOODRUFF: Staff?

13 MS. McCLOWRY: No.

14 JUDGE WOODRUFF: SPP?

15 MR. LINTON: No questions.

16 JUDGE WOODRUFF: Public Counsel?

17 MR. MILLS: No questions.

18 JUDGE WOODRUFF: Empire?

19 MR. COOPER: No questions.

20 JUDGE WOODRUFF: All right. Questions from
21 the bench, Commissioner Kenney?

22 COMMISSIONER KENNEY: Just a couple.

23 EXAMINATION

24 QUESTIONS BY COMMISSIONER KENNEY:

25 Q. Good afternoon, Mr. Doying.

1 A. Good afternoon.

2 Q. I was asking earlier, and I inquired of
3 Mr. Zobrist, about the Form 990 and the role that Potomac
4 Economics played in the market research that's listed on
5 that.

6 A. Correct.

7 Q. Can you shed any further light on the subject
8 matter of that market research and is it different from his
9 role as an independent market monitor?

10 A. Sure. Let me first make sure we're talking
11 about the same thing, so I answer correctly. I believe the
12 Form 990, Karl had a copy he showed me, it was 3.25 million.
13 Is that the number, just so I'm clear?

14 Q. That's right. I was looking at the copy that
15 was in response to Staff Data Request 606 or 661.

16 A. Okay.

17 Q. And it was attached to Adam McKinnie's
18 testimony.

19 A. I believe I know the documents, so I think I
20 can answer the question.

21 Q. Okay.

22 A. The form lists all of our outside vendors and
23 the expenses incurred for those vendors. I think the title
24 of that charge on 990 is probably not a very apt descriptor
25 of the services that are provided.

1 Q. Okay.

2 A. The services provided by the IMM are primarily
3 market monitoring mitigation. There's some element of that
4 cost that includes fixed costs for computer maintenance,
5 upgrades, that type of work, and then there is some costs
6 associated in there for evaluation of MISO markets,
7 preparation of reports for the board of directors or for the
8 Federal Energy Regulatory Commission, but none of those fees
9 would include consulting services for management.

10 Q. So that's what that is?

11 A. That's correct.

12 Q. Those are his market monitoring duties, not a
13 separate contract where he's doing other things for you-guys?

14 A. That's correct.

15 Q. Okay. All right. Then that's that. I think
16 we've probably talked to death the resource adequacy
17 construct, so I'm not going to ask any more questions about
18 it. Thank you.

19 A. Thank you.

20 JUDGE WOODRUFF: Any recross based on those
21 questions from the bench? Any redirect?

22 MR. ZOBRIST: Just one question.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MR. ZOBRIST:

25 Q. Mr. Healy, I believe, asked you about the

1 transmission or, like, Ameren retired capacity and was
2 therefore short. What relationship would that have as far as
3 the auction would force them into it, would it -- what
4 attitude would they take toward the auction if such a
5 retirement capacity occurred?

6 A. Any load-serving entity within MISO under the
7 tariff currently or as proposed before FERC is required to
8 hold resources, reserves sufficient to meet their load demand
9 forecast plus reserve margin. If a load-serving entity were
10 to retire capacity that they owned or contract expired that
11 they had in place, their options would be to either, one,
12 build new capacity themselves, enter into another contract,
13 or to participate in the auction. My expectation based on
14 the current auction as well as all of the other markets that
15 MISO operates is that most people would choose to self-supply
16 through either building or entering into a contract.

17 Q. Thank you.

18 MR. ZOBRIST: Nothing further, Judge.

19 JUDGE WOODRUFF: All right. Mr. Doying, you
20 can step down now.

21 THE WITNESS: Thank you.

22 JUDGE WOODRUFF: And we're about due for a
23 break before we do the last witness for the day, I believe,
24 is Mr. Kind. So we'll take a break now and we'll come back
25 at 3:15.

1 (A break was held.)

2 JUDGE WOODRUFF: All right. We have one more
3 witness for today, and that is Mr. Kind.

4 (The witness was sworn.)

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. MILLS:

7 Q. Can you state your name for the record,
8 please?

9 A. My name is Ryan Kind.

10 Q. And by whom are you employed and in what
11 capacity?

12 A. I'm employed by the Missouri Office of the
13 Public Counsel as a chief energy economist.

14 Q. And have you caused to be filed in this case
15 rebuttal testimony, supplemental rebuttal testimony, and
16 surrebuttal testimony?

17 A. Yes, I have.

18 Q. And do you have copies of that testimony there
19 with you?

20 A. Yes.

21 Q. Do you have any corrections to make to those
22 pieces of testimony?

23 A. Yes, I have several corrections.

24 Q. Okay. Could you walk us through those one by
25 one, please?

1 A. All right. I'm going to just go through them
2 in chronological order. Rebuttal, then surrebuttal, then
3 supplemental rebuttal. So the first one is my rebuttal
4 testimony, and on page 7, there's a typographical error at
5 the end of line 2. The number seven should be deleted and
6 replaced with a question mark.

7 There's one other correction in that same
8 testimony, and that's on page 16, and it's in the second line
9 of the answer there and the answer begins on line 5, so it
10 would be in line 6. And the third word in that line should
11 be Ameren, and there's a word that looks a lot like Ameren
12 but it was misspelled, so we'll replace that third word with
13 Ameren.

14 In my surrebuttal testimony, I have just one
15 correction to make, and that's on page 6 at line 8. I have
16 used an abbreviation for Ameren Energy Marketing there, and I
17 used the wrong abbreviation. So in parentheses where it says
18 AER, it should say AEM. AER is a different Ameren
19 subsidiary.

20 Moving on to my supplemental rebuttal
21 testimony, there is a correction I need to make on page 13,
22 in line 17. At the beginning of line 17, there's a reference
23 to FERC Order Number 679, and that should be replaced with
24 the Federal Power Act. Those are all the corrections that I
25 have.

1 Q. With those corrections, if I were to ask you
2 the same questions in your testimony here today, would your
3 answers be the same?

4 A. Yes, they would.

5 Q. And are those answers true and correct to the
6 best of your knowledge, information, and belief?

7 A. Yes, they are.

8 MR. MILLS: Judge, with that, I will offer --
9 and I'm sorry.

10 JUDGE WOODRUFF: Eleven, 12, and 13.

11 MR. MILLS: Exhibits 11, 12, and 13, and 13
12 consists of NP and HC versions, and tender the witness for
13 cross-examination.

14 JUDGE WOODRUFF: All right. Eleven is his
15 rebuttal, 12 is his surrebuttal, and 13-HC and NP is his
16 supplemental rebuttal.

17 MR. MILLS: Correct.

18 JUDGE WOODRUFF: All right. Any objections to
19 their receipt?

20 MR. TRIPP: Yes, Your Honor.

21 JUDGE WOODRUFF: What's your objection?

22 MR. TRIPP: Ameren Missouri has two different
23 objections. The first objection goes -- it relates to --
24 I'll give you the page and line references, and then if you
25 don't mind, the basis for the objection.

1 JUDGE WOODRUFF: Okay.

2 MR. TRIPP: Exhibit 12, his surrebuttal
3 testimony, pages 4, line 26 through page 5, line 5.

4 JUDGE WOODRUFF: That was page 4?

5 MR. TRIPP: Line 26 through page 5, line 5.

6 JUDGE WOODRUFF: Okay.

7 MR. TRIPP: And the next reference also
8 relates to the same objection.

9 JUDGE WOODRUFF: Okay.

10 MR. TRIPP: That would be Exhibit 13, the
11 supplemental rebuttal testimony.

12 JUDGE WOODRUFF: All right.

13 MR. TRIPP: Page 23, lines 10 through 20.

14 JUDGE WOODRUFF: Okay.

15 MR. TRIPP: And Judge, the basis for our
16 objection is that it really is testimony as to the purported
17 influence of Ameren or any of its companies have had by a
18 vote or provision by MISO to propose a capacity market. It's
19 not based on any fact, data, or personal knowledge possessed
20 by Mr. Kind. Instead, it lacks foundation and is
21 speculation.

22 He's acknowledged in his deposition that he
23 was not present during any decision-making at MISO and that
24 he has no firsthand knowledge of any vote cast by Ameren as
25 to what capacity construct should be proposed by -- for FERC

1 approval, and he offers his testimony instead based upon his
2 own reasoning.

3 It makes no difference whether or not he
4 couches it as an opinion because an expert opinion must be
5 based on facts, data, or material made known to him. Even if
6 it's inadmissible, as long as it's relied upon by experts in
7 the field. So he lacks the foundation for that testimony and
8 we object to the admission of those particular portions.
9 That's our first objection.

10 JUDGE WOODRUFF: All right. Mr. Mills, what's
11 your response to that?

12 MR. MILLS: Well, my response is, and I'll go
13 through the two sections in order. For example, in the
14 section of his surrebuttal testimony, much of the testimony
15 that -- that Ameren Missouri seeks to strike is fact
16 testimony. So for example page 4, line 31, it talks about
17 the fact that Ameren is MISO's largest member. It goes on to
18 talk about the geographic position of Ameren Missouri within
19 the MISO footprint. It talks about the integration of
20 Entergy into MISO.

21 So there are facts there that support the
22 conclusions that are within that section. So I don't think
23 this is just sort of pie-in-the-sky speculation. These are
24 reasonable inferences that Mr. Kind as an expert witness has
25 drawn from the facts within that section.

1 With respect to the second portion that Ameren
2 Missouri's objecting to, on page 23 of the supplemental
3 rebuttal testimony, it's much the same thing. The facts
4 there are the fact that most of its customer public interest
5 representative, consumer advocate, state regulators have
6 opposing views. The facts are that Ameren affiliates were
7 consistently supportive. And so based on those facts,
8 Mr. Kind draws an expert opinion based on those facts as to
9 whether or not Ameren service personnel can adequately
10 represent the interest of those customers.

11 So again, this is not just some pie-in-the-sky
12 pure speculation. There are facts here upon which the
13 particular conclusions that Mr. Kind draws are based. So I
14 think the objection is without merit.

15 JUDGE WOODRUFF: I'll overrule the objection.
16 Did you have any other objections?

17 MR. TRIPP: Yes, Your Honor. Just this last
18 objection goes again to the supplemental rebuttal testimony,
19 page 20, line 8.

20 JUDGE WOODRUFF: Page 20, line 8.

21 MR. TRIPP: Correct, through page 21, line 2
22 -- oh, I'm sorry, line 12. I apologize.

23 Judge, our objection to this is that it's
24 inadmissible hearsay. What is set out there is a newspaper
25 -- or I'm sorry, a journal article where Mr. Kind quotes from

1 a November 2010 article by former Commissioner Davis
2 published well before MISO set out its published capacity
3 market or proposed capacity market.

4 Mr. Kind fails to provide any sufficient
5 foundation for the admission of this hearsay in that he
6 formed his opinion regarding FERC's transmission rate
7 incentives well before he filed his supplemental rebuttal
8 testimony. He does not state in any way that he relies upon
9 this in forming his opinion, which is the necessary
10 foundation for that hearsay testimony.

11 So therefore, it's really offered in a
12 gratuitous manner to bolster an opinion he's already stated,
13 rather than one -- using it that he's relying on. So that's
14 why we believe that that lacks foundation and is
15 inadmissible.

16 JUDGE WOODRUFF: Your response?

17 MR. MILLS: I'm not sure I even followed the
18 argument. Was the argument that this -- that the article
19 cited by Mr. Kind was published after Mr. Kind had formed his
20 opinion?

21 MR. TRIPP: No, it was he's already formed his
22 opinion at the time that he cites it. He doesn't state that
23 he relies on it. In order to -- for an expert to rely on
24 hearsay testimony, he has to rely on it in forming his
25 opinions and it has to be the type of data that an expert in

1 his field would reasonably rely upon.

2 MR. MILLS: Okay, Judge. Just -- I think the
3 testimony filed before this body would be even longer and
4 harder to read if every time a witness cites a particular
5 source the witness goes on to say, and I relied upon this
6 source. I think it's implicit in the fact that Mr. Kind is
7 citing this that he believes it's reliable and that he read
8 it and formed part of the basis of his testimony. If that
9 was not the case, he wouldn't have put it in here.

10 So I think the fact that it doesn't explicitly
11 say that this is something that Mr. Kind relied upon, I think
12 you could probably find any particular piece of testimony in
13 which the witness does not explicitly say after every single
14 citation that they relied up on the information cited.

15 And with respect to whether or not former
16 Commissioner Davis is a reliable source on whom an expert
17 would rely, I think regardless of how he is viewed in any
18 other venue, I think his opinions within the venue here at
19 the Missouri Public Service Commission makes this a
20 reasonable source on which a witness would reasonably place
21 some credence. So I think this objection as well
22 ill-founded.

23 MR. TRIPP: Judge, if I just have a very brief
24 response.

25 JUDGE WOODRUFF: Sure.

1 MR. TRIPP: It really goes to the issue of
2 timing. He had already formed the opinion that he had
3 stated. It's really improper bolstering.

4 JUDGE WOODRUFF: How do we know his opinion
5 had already been --

6 MR. TRIPP: Well, this is -- his supplemental
7 rebuttal testimony had been filed in January. He's already
8 stated the same opinions in his prior testimony.

9 JUDGE WOODRUFF: Okay. And then my question
10 to you, Mr. Mills, is what's the relevance of Commissioner
11 Davis's statement?

12 MR. MILLS: It has to do with the impact of
13 enhanced transmission rates and the impact that they can have
14 on utility rates for Missouri customers, and the fact that
15 Mr. Kind is not simply making up on his own or is not the
16 only person to have come to the conclusion that FERC-enhanced
17 recovery for transmission can impact local rates.

18 So I mean, I would not call it bolstering. I
19 would call it citation to another knowledgeable expert in the
20 field who has come to the same conclusion as Mr. Kind.

21 And it appears as though, and I'm still not
22 following the whole date-timing thing and whether how that
23 makes it bolstering as opposed to relying, but it appears
24 that this -- that this article came out in November and this
25 testimony came out in -- in January, so it's not something

1 that came out after Mr. Kind wrote his testimony, and so of
2 course he had to rely on it.

3 JUDGE WOODRUFF: It's November of 2010,
4 according to the testimony.

5 MR. MILLS: Exactly, yeah.

6 JUDGE WOODRUFF: All right. I'm going to
7 sustain the objection to this. I believe it is simply
8 hearsay. There's no basis to rely on it.

9 MR. MILLS: Okay.

10 JUDGE WOODRUFF: So this is exhibit -- this is
11 supplemental rebuttal, Exhibit 13, page 20, line 8 through
12 page 21, line 12 will be stricken.

13 MR. MILLS: And that section is not highly
14 confidential, so it's the same lines, numbers in 21 HC and 21
15 NP.

16 JUDGE WOODRUFF: Okay. Thank you. Any other
17 objections?

18 MR. TRIPP: None.

19 JUDGE WOODRUFF: With that modification, then,
20 11, 12, and 13-HC and NP are received.

21 (Exhibit Numbers 11, 12, 13-HC and 13-NP was
22 received into evidence by Judge Woodruff.)

23 MR. MILLS: And I have tendered the witness
24 for cross-examination.

25 JUDGE WOODRUFF: For cross-examination, we

1 begin with MJMEUC.

2 MR. HEALY: No questions, Your Honor.

3 JUDGE WOODRUFF: SPP?

4 MR. LINTON: No questions.

5 JUDGE WOODRUFF: Empire?

6 MR. COOPER: No questions.

7 JUDGE WOODRUFF: MIEC?

8 MS. ILES: No questions.

9 JUDGE WOODRUFF: MISO?

10 MR. ZOBRIST: No questions.

11 JUDGE WOODRUFF: Staff?

12 MS. McCLOWRY: Yes, I have some questions.

13 CROSS-EXAMINATION

14 QUESTIONS BY MS. McCLOWRY:

15 Q. Good afternoon, Mr. Kind.

16 A. Good afternoon.

17 Q. You're the chief energy economist in the

18 Office of Public Counsel, that's correct?

19 A. Yes, it is.

20 Q. And you've been employed as an economist in

21 that office since 1991?

22 A. Correct.

23 Q. And you have previously participated in cases

24 for OPC relating to Missouri electric utilities other than

25 AmerenUE or Ameren Missouri requesting Commission

1 authorization to participate in RTOs or independent
2 transmission system organizations; is that correct?

3 A. That's correct.

4 Q. I'm going to show you a document entitled
5 Order Approving Stipulation and Agreement. Do you recognize
6 this as a copy of the Commission Order approving stipulation
7 and agreement in Case Number EO-2009-0179?

8 A. Yes, I do.

9 Q. Do you recall whether or not you worked on
10 Case Number EO-2009-0179 for the -- for OPC?

11 A. I do recall that I did, yes.

12 Q. Mr. Kind, would you turn to the second page of
13 that Order? And I'm looking at the first paragraph, and that
14 reads, On January 27th, 2009, all of the parties filed a
15 stipulation and agreement with an attached service agreement.
16 The signatories include KCPL GMO, the Staff of the
17 Commission, the Office of the Public Counsel, Southwest Power
18 Pool, Inc., the Empire District Electric Company, and Dogwood
19 Energy, LLC.

20 Have I read that correctly?

21 A. Yes.

22 Q. Now I would like you to -- point you to page 7
23 of the attached stipulation and agreement.

24 A. Okay.

25 Q. And under the heading relationship between the

1 service agreement and FERC determined incentives reads, For
2 example, in response to Section 1241 of the Energy Policy Act
3 of 2005, the FERC has conducted a rulemaking process that
4 culminated in Order Number 679 and subsequent orders on
5 rehearing in which it identified financial incentives that
6 the FERC may allow.

7 Those incentives include, among other things,
8 certain incentives for investment in new transmission,
9 investment in new transmission technologies, improvements in
10 the operation of transmission facilities, and participation
11 in a Transco or a transmission organization. Consistent with
12 Section 3.1 of the service agreement in its primary function,
13 KCP&L GMO recognizes that the MO PSC has the sole regulatory
14 authority to determine whether or not such incentives related
15 to KCPL GMO's transmission facilities should be included in
16 rates for Missouri bundled retail load.

17 Have I read that correctly?

18 A. Yes, you have.

19 Q. Now I would like to turn your attention to the
20 Attachment A in the document that comes after page 23.

21 A. Okay.

22 Q. Do you recognize this as a copy of the
23 stipulation and agreement in Case Number EO-2006-0142?

24 A. Yes, I do.

25 Q. Does the caption in that case read, In The

1 Matter of the Application of Kansas City Power & Light
2 Company for Authority to Transfer Functional Control of
3 Certain Transmission Assets to The Southwest Power Pool,
4 Inc.? Is that the caption?

5 A. You're referring to the Commission Order in --
6 the caption in the Commission's Order?

7 Q. In the Attachment A on the next page. Sorry.

8 A. Attachment A? The second page of Attachment
9 A, or where should I be?

10 Q. Oh, you're on the first Attachment A, I was on
11 the second one, apparently.

12 MR. MILLS: Judge, can I ask a clarifying
13 question?

14 JUDGE WOODRUFF: Go ahead.

15 MR. MILLS: Because this Attachment A bears a
16 different case number from the other one, was this an
17 attachment to the other stipulation and agreement?

18 MS. McCLOWRY: Yes.

19 MR. MILLS: Okay.

20 MS. McCLOWRY: It was the previous case.

21 MR. MILLS: Okay.

22 THE WITNESS: Yeah, I'm confused too. You've
23 got a stipulation and agreement here and now we're -- which
24 is from EO-2009-0179, and now you're referring me to an
25 attachment from a different case; is that right?

1 BY MS. McCLOWRY:

2 Q. Yes, that's right. It's an attachment to that
3 Order.

4 A. To what Order?

5 Q. The Order -- the first Order EO-2009-0179, In
6 The Matter of the Application of Kansas City Power & Light
7 Greater Missouri Operations Company For Authority to Transfer
8 Functional Control of Certain Transmission Assets to the
9 Southwest Power Pool, Inc. So it's an attachment to that
10 Order.

11 A. Even though it has a different case number?

12 Q. Yeah. And is this attachment -- a copy of the
13 stipulation and agreement in Case Number EO-2006-0142?

14 COMMISSIONER KENNEY: Do you have extra
15 copies?

16 THE WITNESS: You have provided an attachment
17 that is a copy of a stipulation and agreement. I have no
18 idea what it's an attachment to, but I see the attachment.

19 BY MS. McCLOWRY:

20 Q. Did you work on that case?

21 A. Which case?

22 Q. EO-2006-0142?

23 A. I believe I did, yes. So is there some
24 reference in EO-2009-0179 stipulation agreement to this
25 attachment regarding another case that you're directing me

1 to?

2 MR. MILLS: Judge, if I may.

3 JUDGE WOODRUFF: Yes.

4 MR. MILLS: I'm really doing this in the
5 spirit of corporation.

6 JUDGE WOODRUFF: Yes.

7 MR. MILLS: Page 2 of the stipulation and
8 agreement, which is about three or four pages in, Paragraph D
9 refers to Attachment A.

10 THE WITNESS: Thank you.

11 BY MS. McCLOWRY:

12 Q. Did you find it, where it reads KCPL
13 agreement?

14 A. Yes, I see that reference. Okay.

15 Q. That Section D does say the KCP&L agreement is
16 included as Attachment A; is that correct?

17 A. It says that in Section D, yes.

18 Q. Okay.

19 A. Uh-huh.

20 Q. All right. Now back to that Attachment A, the
21 Order in EO-2006-0142 -- the stipulation agreement, excuse
22 me.

23 A. Okay. Back to the first Attachment A?

24 Q. Yes.

25 A. Okay.

1 Q. Okay. Thank you. I'm sorry this is
2 confusing. And I would like to point you to page 9 of this
3 stipulation and agreement where it says, Relationship between
4 the service agreement and FERC-determined incentives. Do you
5 see that?

6 A. Yes, I do.

7 Q. And that paragraph states, For example, in
8 response to Section 1241 of the Energy Policy Act of 2005,
9 the FERC has issued a notice of proposed rulemaking in Docket
10 Number RM06-4-000, in which it is proposing certain
11 incentives for investment in new transmission, investment in
12 new transmission technologies, improvements in the operation
13 of transmission facilities, and participation in a Transco or
14 a transmission organization.

15 Consistent with Section 3.1 of the service
16 agreement and its primary function, and as acknowledged by
17 the aforementioned FERC NOPR, KCPL recognizes that the MO PSC
18 has a sole regulatory authority to determine whether or not
19 such incentives related to KCPL's transmission facilities
20 should be included in rates for Missouri bundled retail load.

21 Have I read that correctly?

22 A. I believe so.

23 Q. And on page 23 of that agreement, is
24 Mr. Mills's signature; is that correct?

25 A. Yes, it is.

1 Q. Okay. And on the second page -- or on the
2 other side of the signature page is a certificate of service
3 dated February 24th, 2006; that's correct?

4 A. Yes.

5 Q. And I have one more question. I realize
6 you're not an attorney, but can you identify what Section
7 1241 of the Energy Policy Act of 2005 is?

8 A. Where was the reference in these documents
9 again, where it was referenced?

10 Q. This is a separate question.

11 A. Oh, okay. I thought it was referenced in one
12 of them, I believe. It is.

13 So we're not -- you're not asking about 1241
14 of the Energy Policy Act, you had a different section you're
15 asking about?

16 Q. Oh, yeah, it is. It's in the first sentence.
17 It's on page 9 and page 7.

18 A. No, I am not sure what that section pertains
19 to.

20 Q. Okay.

21 MS. McCLOWRY: I have no further questions.

22 JUDGE WOODRUFF: And for Ameren?

23 MR. TRIPP: None at this time, Your Honor.

24 JUDGE WOODRUFF: All right. Come up for
25 questions from the bench. Commissioner?

EXAMINATION

1
2 QUESTIONS BY COMMISSIONER KENNEY:

3 Q. Mr. Kind, thank you. I just have a few
4 questions --

5 A. Sure.

6 Q. -- about the forward capacity market. Do you
7 have an opinion about the propriety of a forward capacity
8 market in vertically integrated states, or in a market
9 predominated by vertically integrated states?

10 A. I do. I believe that the existing voluntary
11 forward capacity market at MISO is more than adequate to
12 provide a sort of a forum for these trades to take place and
13 am -- see no purpose being served by the mandatory capacity
14 market that's part of the current resource adequacy construct
15 proposal of MISO that's being considered by FERC.

16 Q. Do you have an opinion about whether the
17 self-scheduling and the opt-out provisions are sufficient to
18 cure any defects in -- in the resource adequacy construct
19 without self-scheduling and the opt-out provisions?

20 A. I believe that they are adequate to the extent
21 that the FERC approves them as they are proposed in the MISO
22 filing.

23 Q. Do you have any hesitation or concern about
24 whether FERC will approve it as filed?

25 A. I have lots of concerns about that, yes,

1 because FERC has been seemingly consistently leaning towards
2 the development of mandatory capacity markets and pretty much
3 seems to be ignoring the issues of state commissions as it
4 moves along that path.

5 Q. Why do you think that is? Why is that a FERC
6 policy favoring mandatory forward capacity markets, in your
7 opinion?

8 A. I think there's a couple things involved. One
9 is that it -- it moves -- I think the FERC perceives that as
10 expanding its jurisdiction over generation markets, and I
11 think it thinks that the more jurisdiction it has, the more
12 ability that it has to solve problems that may occur and do
13 it in a way that's sort of a more uniform, sort of one size
14 fits all approach, as opposed to letting individual states
15 have the discretion to have their state-by-state approaches
16 to that issue.

17 I think as another witness stated earlier
18 today, the FERC seems to have this belief that if you get
19 capacity market prices high enough, we're never going to have
20 any problems with resource adequacy issues in terms of having
21 enough capacity available to reliably serve load. And I
22 think that as the FERC has taken -- expanded its jurisdiction
23 in the area of generation markets, it doesn't really want to
24 get caught making mistakes and having a system that -- where
25 we don't have reliable electric service that can be

1 attributed to be their fault.

2 Q. Okay. Thank you. That's helpful. Moving to
3 a different direction now, but related. Do you perceive any
4 inherent problems between Ameren -- in having Ameren Services
5 act or speak for Ameren Missouri and Ameren Illinois? Is
6 there an inherent problem with that structure?

7 A. I think there is a problem with what you've
8 cited of Ameren Services speaking on behalf of both the
9 operating companies in Missouri and Illinois. So in
10 Missouri, the operating company is vertically integrated
11 electric, Union Electric. In Illinois, it's really just the
12 distribution-only companies.

13 But the bigger problem I see, frankly, has to
14 do with having the same representative of -- that represents
15 the interests of Ameren Transmission Service and Ameren
16 Missouri, and the same representative that represents the
17 interests of Ameren Energy Marketing, the power marketing
18 branch of Ameren, and Ameren Energy Generation and the other
19 merchant generation affiliate that Ameren has.

20 Because those -- there's a clear interest, I
21 believe, in Ameren with their planning process in trying to
22 execute plans that will most benefit their shareholders. And
23 in order for them to do that, they really have the only -- a
24 limited level of earnings that they can make from their
25 regulated activities in Missouri and Illinois, yet the

1 earnings that they can make in FERC-regulated markets or
2 FERC-structured markets -- I think to say FERC-regulated is
3 kind of a stretch -- but the interest they have in making
4 earnings from those markets where earnings would never really
5 be capped by state regulators, I think leads them at the
6 holding company level to take positions that are going to try
7 and best enable earnings opportunities at those unregulated
8 affiliates, which would include ATX, Ameren Energy Marketing
9 and Ameren Energy Generation Company.

10 Q. I mean, so are you going so far as to say that
11 they would make decisions that would be detrimental to Ameren
12 Missouri in favor of ATX and Ameren Energy Services and the
13 marketing firm?

14 A. I think that they essentially have a fiduciary
15 responsibility to their shareholders to do so, yes. For
16 instance, you know, Ameren Energy Marketing, Ameren Energy
17 Generation, they have an interest in having capacity markets
18 which yield the highest possible capacity prices. They've
19 got capacity to sell. And in the case of Union Electric
20 Company, they may or may not have a surplus capacity. High
21 prices might benefit them sometimes and benefit Missouri
22 customers and it could harm Union Electric Company and harm
23 its customers at times.

24 Q. Let me ask you a question about that
25 statement. It will help the customers -- the Missouri

1 jurisdictional customers when Ameren -- when UE is long on
2 capacity and has excess capacity to sell, essentially
3 increasing their off-system sales, which would endure to the
4 benefit of the ratepayers here, right?

5 A. Yes, that's correct.

6 Q. When they're short, it's exactly the converse
7 because they're going to have to go out in the market and
8 buy?

9 A. Right, that's right.

10 Q. And the prices are ultimately going to go to
11 the detriment of our ratepayers?

12 A. That's right. And, you know, whether they're
13 short or long can be something that develops in just a couple
14 years, as Mr. Aurora stated this morning in his testimony.
15 UE is going -- is ongoing has another review of its IRP, is
16 still considering retirement options for Meramec and possibly
17 replacing that with gas generation, or some other option.
18 But there can be things that happen that pretty much cause
19 sudden changes and you just -- all of a sudden you see an
20 announcement that we're retiring this plant. And in the case
21 of Meramec, that means you've got hundreds of megawatts of
22 capacity that have gone away overnight.

23 Q. So is it fair to say that at a minimum, then,
24 Ameren Missouri's interests are going to more often than not
25 diverge from the marketing company in ATX and even the

1 merchant generation arm of -- or the deregulated entities in
2 Illinois?

3 A. I think that's a fair assessment, and I try to
4 obtain as much information as I could in this case to make an
5 informed assessment of that and was not successful in getting
6 all the information I think that would have been helpful in
7 making that assessment.

8 For example, some of the documents provided by
9 Union Electric in discovery indicated that there had been a
10 study of capacity markets and the impact on those capacity
11 markets on Ameren Energy Marketing. But Union Electric
12 refused -- did not provide that as part of their response to
13 my data request, even though I asked for the information from
14 all affiliates pertaining to their assessment of MISO
15 capacity markets.

16 So you will hear -- you will hear Ameren
17 attorneys in this proceeding making claims that, well,
18 Mr. Kind doesn't have any evidence of these different
19 interests, of these different affiliates. At the same time,
20 they are refusing to provide documents like that that would
21 probably pretty clearly show the different interests.

22 Q. Did you-guys file a motion to compel?

23 A. We have filed a motion to compel in this case,
24 and it -- I don't remember if it pertained to that particular
25 DR response, but we frankly do not have enough attorneys to

1 aggressively pursue all of the objections to discovery that
2 we received from Union Electric Company, as they have
3 objected, I think, to probably over half the data requests
4 that I sent in this case, and we just don't have the
5 resources to -- to pursue that.

6 Q. Well, okay, well, let me go back to my
7 question then. So you agreed with me that more often than
8 not, then, it's going to be -- their interest will diverge,
9 that was my question and you said yes?

10 A. Yes.

11 Q. Okay. So let's assume that that is, in fact,
12 the case, what do we do about it? Because as the market is
13 currently set up and as MISO's tariff is currently set up,
14 there's only one vote per entity. So what would be the
15 solution to that problem?

16 Because you've got the transmission-owner
17 units, and then the marketing arm still gets to be a market
18 participant and they still get to participate in the market,
19 but there's only one vote for all of those entities. How
20 could that be cured?

21 A. Well, it is difficult to answer that question
22 and I think that the approach that's -- that was outlined by
23 the Arkansas Commission is one viable approach. It's not
24 been tried yet to see if that's workable.

25 Q. Tell me what you understand the Arkansas

1 Commission's position to be, and this is -- and this is --
2 it's sort of tangential because it's Order Number 54
3 addressing Entergy Arkansas transferring functional control
4 of its assets to the MISO. So what is your understanding of
5 what Arkansas is requesting or is setting forth?

6 A. Okay. Well, the -- basically, generally,
7 holding companies that have operating companies in several
8 states will -- and where those operating companies are
9 vertically integrated utilities that include transmission,
10 they will generally join MISO as -- as one -- one
11 transmission-owning member.

12 Q. Uh-huh.

13 A. And that is -- I don't -- I don't believe
14 that's the way the MISO transmission owners agreement was
15 initially set up, but that's the way it is set up today. And
16 so the Arkansas Commission has said you will -- that the
17 Arkansas operating company, which is a subsidiary of the
18 Entergy holding company, will sign the transmission owners
19 agreement as a separate signatory and you will represent
20 yourself separately in MISO matters, participate in MISO as a
21 separate entity from the other Entergy affiliates.

22 Q. So Entergy Arkansas, Incorporated would have
23 one vote separate and apart from Entergy Mississippi and
24 Entergy New Orleans, Entergy Texas, Entergy -- so you'd have
25 really five or six different Entergy -- Entergy New Orleans.

1 So each one of them would have -- would be a vote, would be a
2 transmission-owning entity?

3 A. No, I think actually what would happen, unless
4 other states that have Entergy operating companies took --
5 gave the guidance similar to the guidance that's been
6 provided by the Arkansas Commission, and I'm not aware of
7 that happening in any of the other jurisdictions where
8 Entergy has operating companies. I think what would happen
9 is that you'd essentially have two Entergy groups at MISO.
10 You would have Entergy Arkansas as a transmission owner and
11 then you would have all the other Entergy affiliates lumped
12 together as a transmission --

13 Q. Why would they ever agree to that? If Entergy
14 Arkansas carves out a special deal for itself, why would not
15 all of the other operating companies request the same
16 treatment?

17 A. Well, I think -- I don't think they would
18 request the same treatment. I think that that -- such an
19 arrangement would have to be spurred by the regulators who
20 oversee those other affiliates, and I haven't -- I haven't
21 seen that happening.

22 Q. So that's one possible solution. What, if
23 any, other possible solution would you be able to propose?

24 A. Well, another possible solution which wouldn't
25 happen in the context of this case, but conceivably could

1 happen in the next case where UE comes in to get approval to
2 continue participating in MISO or another RTO. If a cost
3 benefit study is done that shows that they're better off
4 being in SPP and just the Union Electric operating company
5 piece of Ameren moves to SPP, I think these conflicts would
6 disappear.

7 But I really see it as almost an unsolvable
8 issue beyond that because you have a situation where you have
9 Union Electric Company is the regulated entity. That's where
10 the Commission can exercise its authority, yet from my
11 experience in analyzing the planning process that takes place
12 at Ameren through reviewing their strategic plans for the
13 last 15 years or so, major decisions are made at the holding
14 company level and that's not the entity that's regulated by
15 this Commission.

16 Q. All right. I don't have any other questions.

17 COMMISSIONER KENNEY: I would be curious to
18 find out, and maybe Mr. Mills can find out whether this
19 specific information you were looking for was subject to a
20 Motion to Compel.

21 MR. MILLS: I will find that out and we can
22 put that on the record tomorrow.

23 COMMISSIONER KENNEY: Okay. Great. Thank
24 you.

25 MR. LOWERY: Commissioner Kenney, I would like

1 to address that because I do have some knowledge about that.
2 I don't know whether this particular DR he was talking about
3 was or was not, but I do know that one Motion to Compel was
4 filed and we worked out -- completely worked out all of the
5 objections and resolution of all of those with Office of
6 Public Counsel.

7 COMMISSIONER KENNEY: All right. So it may or
8 may not have been the Motion to Compel responses to the DR
9 that he's talking about specifically here.

10 MR. LOWERY: And if it were, we worked out a
11 resolution of all of the DR responses.

12 JUDGE WOODRUFF: All right. I have a question
13 also, Mr. Kind.

14 THE WITNESS: Yes.

15 EXAMINATION

16 QUESTIONS BY JUDGE WOODRUFF:

17 Q. And if you could clarify something for me
18 about the voting at MISO. Does the Missouri Office of Public
19 Counsel have a vote at MISO?

20 A. The Missouri Office of Public Counsel
21 participates in the consumer advocate sector at MISO, which
22 includes offices from other states within the MISO footprint
23 that are similar to the Missouri Office of Public Counsel.

24 As a sector, we make -- we make decisions and
25 we put forth positions at the MISO advisory committee. I

1 potentially could get involved in work groups at MISO where
2 there is a -- a different voting structure and it's not
3 sector by sector, but it's more individual entity by
4 individual entity.

5 And these are the types of work group meetings
6 that Mr. McKinnie of the Commission Staff spends almost all
7 of his time devoted to attending meetings like that at MISO
8 and SPP. OPC does not have any staff in order to -- we don't
9 have sufficient staff resources to allow us to participate in
10 MISO to that extent where I would ever be attending those
11 types of meetings and voting as a separate entity on behalf
12 of the Office of Public Counsel.

13 Q. Are there circumstances, though, that assuming
14 you had the funding where you would be in the meeting voting
15 under the same parameters as -- as Ameren?

16 A. I don't understand your question. What do you
17 mean -- which parameters are you referring to?

18 Q. Well, I don't really understand enough about
19 how MISO works to be able to tell you either. What I'm
20 trying to get at, are there situations where Missouri Public
21 Counsel would have one vote and Ameren could have a separate
22 vote and you would be essentially cancelling each other out?

23 A. I think that is probably true, for instance,
24 at the SAWG, the supply adequacy work group, which, sir, was
25 the lower-level working group that -- where the resource

1 adequacy construct arose from.

2 It's my understanding in speaking with people
3 that Ameren was there supporting a five-year capacity market.
4 And if Public Counsel had the resources, we could have been
5 there supporting a -- you know, a much different type of
6 resource adequacy construct.

7 However, even though in the supply adequacy
8 work group, there was a strong majority that was not in favor
9 of this resource adequacy construct, that has moved forward.
10 The MISO chose to move forward with it anyway, and so then
11 it's sort of unclear as -- you know, it's not necessarily
12 clearly stakeholder-driven decisions or at least not
13 decisions that are purely driven by a stakeholder process in
14 a work group like that where each vote has the same impact on
15 MISO decision-making.

16 Q. Okay. Well, that leads me to the real concern
17 I have here and you can clarify for me. If your position
18 were adopted and Ameren now has two votes, have you diluted
19 Public Counsel's vote?

20 A. I don't believe so. I think what we've done
21 is we've made it more transparent what exactly is Ameren
22 Missouri supporting at MISO. And I think actually that
23 transparency could be helpful in -- you know, in us
24 understanding exactly how -- how the Missouri regulated
25 utility is putting forth its views at MISO.

1 So I really don't see that as a problem, and
2 it's not like I would, you know, that I have this ability to
3 go and vote and offset their vote anyway. And the votes have
4 more to do -- there's more to the voting process than just
5 those types of work groups though. There's a voting process
6 within the transmission owners sector where they often need,
7 I believe, you know, to have a unanimous consent to move
8 forward with proposals.

9 Q. And you don't get to vote in that?

10 A. No, I'm not involved in that. And that hasn't
11 -- you know, that has a strong influence in itself what they
12 decide. For instance, revisions to the transmission owners
13 agreement.

14 And then there's also the sector process,
15 which in -- sector voting process within the MISO advisory
16 committee. And that's also a very important process. That's
17 a process where Commissioner Kenney has been, I think,
18 extensively participating as part of his participation in
19 OMS, and where long ago when Public Counsel had twice as many
20 economists as we have now, I was as substantially involved
21 about ten years ago in representing the consumer sector at
22 MISO advisory committee meetings.

23 Q. Okay. Thank you for clarifying that for me.

24 A. Sure. Hope that's helpful.

25 JUDGE WOODRUFF: Thank you. Recross based on

1 questions from the bench then? Anyone wish to offer any
2 recross? Then redirect.

3 MR. MILLS: I have no redirect, Your Honor.

4 JUDGE WOODRUFF: All right. Then Mr. Kind,
5 you can step down.

6 THE WITNESS: Okay.

7 JUDGE WOODRUFF: And I believe that leaves
8 Ms. Borkowski as our last witness for tomorrow.

9 MR. LOWERY: Your Honor, Mr. Mills and I have
10 been visiting and I don't know how this is going to come out.
11 It may -- and the Commissioners may not -- if we would agree
12 to this, it might not be acceptable, but Mr. Mills is going
13 to at least visit with me about the possibility of us
14 stipulating to put a small portion of Ms. Borkowski's
15 deposition and some data request responses in the record, and
16 then she would not, as far as we're concerned, or as far as
17 we're concerned necessarily need to appear. Now, we haven't
18 agreed to that and we need to talk about it, but the
19 Commissioners may have questions. The other parties, well,
20 I'm presuming, but you can poll the room. I suspect the
21 other parties don't have questions.

22 JUDGE WOODRUFF: All right. Let me ask
23 Commissioner Kenney, do you know if you'll have questions for
24 Ms. Borkowski?

25 COMMISSIONER KENNEY: Oh, who can say.

1 MR. LOWERY: And if anyone does, she'll come.

2 COMMISSIONER KENNEY: I'm not going to be here
3 tomorrow anyway. I'm going to be in St. Louis. So I would
4 not ask her to come all the way to Jefferson City solely for
5 me, so.

6 MR. LOWERY: And it's possible that I may
7 decide that I want her to come as opposed to this as well.
8 It's sort of a fluid situation we need to talk about.

9 JUDGE WOODRUFF: Do you want about 20 minutes
10 to discuss it amongst yourselves?

11 MR. LOWERY: Can I have a little bit longer
12 than that? Actually, I'm going to talk to Ms. Borkowski in
13 just a few minutes about this very topic.

14 JUDGE WOODRUFF: Okay. I'm just hoping we can
15 come to a result before five o'clock, so we can --

16 MR. LOWERY: Before five o'clock, yes. Do you
17 need to maybe check with the other two commissioners about
18 this?

19 JUDGE WOODRUFF: I will try to, yes.

20 MR. LOWERY: The other thing I would like to
21 bring up, if she is going to appear and we do have agreement
22 in the room about this, would it be possible if she does, we
23 can start at nine o'clock instead of 8:30 tomorrow?

24 JUDGE WOODRUFF: I have no problem with that
25 at all.

1 MR. LOWERY: We will try to figure out where
2 we are on this and get back to you.

3 COMMISSIONER KENNEY: Let me ask you this,
4 because I don't want to hold this up because I'm going to
5 leave and I may not be around as you-guys continue to talk
6 about this.

7 If I did have questions, they would be about
8 the relationship between Transco and Ameren Missouri and
9 Ameren Illinois and Ameren Marketing and who takes what role
10 as either market participant or TO and how that functions
11 within MISO. So -- so I will probably have questions, but I
12 don't --

13 MR. LOWERY: Well, then, I think we should
14 have her come down.

15 COMMISSIONER KENNEY: Well --

16 MR. LOWERY: Well, she was planning to anyway,
17 Commissioner, and that's part of her job, so we don't have
18 any problem with that at all.

19 COMMISSIONER KENNEY: All right. Then
20 you-guys are going to do it at 9:00?

21 JUDGE WOODRUFF: 9:00, or it can be later.
22 I'm sure it's not going to take all day for her.

23 COMMISSIONER KENNEY: No, 9:00's fine.

24 JUDGE WOODRUFF: Commissioner Kenney, I
25 imagine we can set it up for you to do it from St. Louis.

1 COMMISSIONER KENNEY: I have a memorial
2 service to attend tomorrow at 10:00, so I'm trying to figure
3 out in my own head when I can do this.

4 MR. LOWERY: Mr. Mills had indicated he didn't
5 have very many questions.

6 MR. MILLS: No, I really don't.

7 MR. LOWERY: And Mr. Mills is the only one
8 with any questions.

9 JUDGE WOODRUFF: We could probably even do it
10 in the afternoon.

11 COMMISSIONER KENNEY: I was going to say, do
12 you want to do it in the afternoon?

13 JUDGE WOODRUFF: From our perspective, but I
14 don't know -- I see looks of shock on everybody.

15 MR. LOWERY: I will obviously do whatever the
16 Commission wants to do. It would only be a personal issue,
17 which would be an illegitimate reason not to do it, so.

18 MR. MILLS: Well, you know, I'll join in his
19 personal issue. I prefer not to do it in the afternoon as
20 well for personal reasons, but.

21 COMMISSIONER KENNEY: Let's do it at 9:00.

22 JUDGE WOODRUFF: All right. Let's do it at
23 nine o'clock tomorrow.

24 MR. LOWERY: We'll just plan to have her come
25 at 9:00, then, as we had originally planned.

1 JUDGE WOODRUFF: Okay. Then we're adjourned
2 until tomorrow morning at nine o'clock.

3 (End of Proceedings Held on 2/10/12.)

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)

) ss:

COUNTY OF GASCONADE)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1108, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es 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 matter 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.

Court Reporter

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