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 1                    STATE OF MISSOURI
               PUBLIC SERVICE COMMISSION
 2

 3

               TRANSCRIPT OF PROCEEDINGS
 4

 5               Procedural Schedule

 6

 7               November 19, 2014

               Jefferson City, Missouri
 8                    Volume 3

 9

10   In the Matter of KCP&L Greater      )

     Missouri Operations Company's       )

11   Application for Authority to         )

     Establish a Renewable Energy        )

12   Standard Rate Adjustment Mechanism  )

13

14

15

16               JUDGE MICHAEL BUSHMANN, Presiding

                    SENIOR REGULATORY LAW JUDGE

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20

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

 2   JUDGE BUSHMANN: Okay. Let's go on the

 3   record. Today is November 19th, 2014, at 10:30

 4   a.m.

 5   The Commission has -- Commission has set

 6   this time for a prehearing conference in the case

 7   captioned as In the Matter of KCP&L Greater

 8   Missouri Operation Company's Application for

 9   Authority to Establish a Renewable Energy Standard

10   Rate Adjustment Mechanism, File No. EO-2014-0151.

11   My name is Michael Bushmann. I'm the

12   Regulatory Law Judge in this matter. Let's have

13   the attorneys make their entries of appearance.

14   For KCP&L Greater Missouri Operations Company?

15   MR. HACK: Yes. Appearing on behalf of

16   KCP&L Greater Missouri Operations Company, Robert

17   Hack, 1200 Main, Kansas City Power and -- sorry --

18   Kansas City, Missouri, 64105.

19   JUDGE BUSHMANN: Commission Staff?

20   MS. JONES: On behalf of the Staff of the

21   Missouri Public Service Commission, Akayla Jones

22   and Robert Berlin. Information's with the court

23   reporter.

24   MR. OPITZ: Judge, I'm on the telephone.

25   This is Tim Opitz on behalf of the Office of Public

 1 Counsel, P.O. Box 2230.

 2   JUDGE BUSHMANN: Okay. I was just going

 3 to come to you next. And Renew Missouri?

 4   MR. LINHARES: Yeah. On behalf of Renew

 5 Missouri, Andrew Linhares. Address is 910 East

 6 Broadway, Suite 205, Columbia, Missouri, 65201.

 7   JUDGE BUSHMANN: Is there anyone on the

 8 line from Ameren Missouri?

 9   MR. LOWERY: Yes, your Honor. Jim Lowery

10 with Smith Lewis, LLP, P.O. Box 918, Columbia,

11 Missouri, 65205, appearing on behalf of Ameren

12 Missouri.

13   JUDGE BUSHMANN: And Ag. Processing? Any

14 appearances? Okay. Well, the partial stipulation

15 and agreement that was agreed to by the parties and

16 approved by the Commission had two issues that

17 remain unresolved, both of which were raised by

18 Renew Missouri.

19   And I believe those issues were whether

20 GMO was required to calculate and report any

21 financial benefits or avoided costs related to

22 renewable energy standard compliance, and, if so,

23 how should they be quantified.

24   So the first thing I wanted to find out

25 from Renew Missouri is exactly what relief is Renew

 1   Missouri asking the Commission to grant with regard

 2   to those two issues?

 3   MR. LINHARES: Yeah. So, Judge, you've

 4   summarized those two issues, and that's how they

 5   appear in the stipulation.

 6   We realize that the stipulation also has

 7   an agreement by the parties that the tariff should

 8   go ahead and be approved as it -- as it was

 9   yesterday.

10   JUDGE BUSHMANN: Right.

11   MR. LINHARES: But I would call -- just as

12   a preliminary matter, I'd call the -- your

13   attention to the Commission's Rule 4 CSR

14   240-20.100, Section 6 and subsection 11.

15   It just states here, Commission approval

16   for proposed rate schedules to establish, modify a

17   RESRAM shall in no way be binding upon the

18   Commission determination.

19   THE COURT REPORTER: I'm sorry. Can you

20   speak up, please?

21   MR. LINHARES: Sure. I'm sure the -- I'm

22   sure the Court can take notice of that section.

23   But we -- I think it's obvious that, in a later

24   rate proceeding, the Commission could make a change

25   to the total amount recoverable under the RESRAM if

1 it wishes to.

2   We're not proposing a specific change to

3 the total RESRAM revenue requirement here. But we

4 would be requesting that the Commission order the

5 company to calculate and report to the Commission

6 all existing benefits that are associated with the

7 cost that it's proposing to recover in this case.

8   And we think that's required by the rule

9 and we'll be filing testimony to that effect, I

10 suppose, this Friday, on the 21st.

11   JUDGE BUSHMANN: So I wanted to make sure

12 that you weren't wanting to go back and change the

13 tariff that just got approved. But you're actually

14 looking forward in the future as to how that might

15 be handled in a future rate case. Is that correct?

16   MR. LINHARES: Well, the stipulation does

17 -- the stipulation does that. The stipulation

18 provides that in -- in paragraph 4, it grants

19 several variances to the utility acknowledging that

20 the Commission has stated that it won't change the

21 fuel adjustment clause outside of the context of a

22 rate case.

23   So the Commission is -- has approved this

24 stipulation and envisions being able to change the

25 administration of the RESRAM in a later rate

 1 proceeding, both on the terms of the costs and the

 2 benefits. So --

 3   JUDGE BUSHMANN: So we're looking forward

 4 and not looking backwards with regard to these two

 5 issues that you've raised; is that correct? We're

 6 looking at the rate case. We're looking at how

 7 that would be affected.

 8   MR. LINHARES: That's true for the amount

 9 recoverable. But the issue of whether benefits

10 have been calculated to the extent that they're

11 required to under the RESRAM is a live issue in

12 this case that we intend to file testimony on.

13   JUDGE BUSHMANN: Okay. So here's a couple

14 of issues I'd like you to consider. And one is

15 that the Commission cannot issue advisory opinions.

16   MR. LINHARES: Right.

17   JUDGE BUSHMANN: You might look at the

18 Laclede Gas versus Public Service Commission 392

19 Southwest Third 24.

20   The other issue that I'd like to you think

21 about is that the definition of a rule, what a rule

22 is in Section 536.010, subsection 4, says that a

23 rule is a statement of general applicability that

24 implements, interprets or prescribes law or policy.

25   It sounds like, from what you've said,

 1   that what you're looking for is an amendment of

 2   RESRAM rule.

 3   MR. LINHARES: No. That's not what we're

 4   looking for. We're looking for enforcement of the

 5   existing rule. I'm happy to explain if --

 6   JUDGE BUSHMANN: Okay. Go ahead. Go

 7   ahead.

 8   MR. LINHARES: -- if that's not clear.

 9   The RESRAM mentions several times -- the RESRAM

10   rule, Section 6, mentions several times that the

11   RESRAM is intended to provide recovery of prudently

12   incurred costs and pass-through of benefits. This

13   is mentioned 13 different times in the -- in the

14   rule.

15   Both of these things are required, prudent

16   recovery of cost and pass-through of benefits. And

17   -- and those are required to be done through the --

18   the mechanism of the RESRAM.

19   Now, the utility has gotten a variance to

20   be able to pass through benefits through other

21   existing mechanisms, through the FAC, for example.

22   And Renew Missouri has no objection to that if

23   that's how they want to do it.

24   However, given that pass-through of

25   benefits is originally required in the rule, that

 1   somehow needs to be accounted for and demonstrated.

 2   What benefits are being passed on? What quantities

 3   of benefits? What type of benefits are we talking

 4   about here? And we believe that burden hasn't been

 5   met.

 6   JUDGE BUSHMANN: But am I correct, then,

 7   that what the issue specifically asked for is

 8   whether that should be calculated and reported,

 9   and, if so, how should it be quantified?

10   And my reading of the rule was that

11   doesn't appear in the rule, those issues about how

12   the -- how it should be calculated, how it should

13   be reported if it should reported and how that

14   calculation should happen.

15   So it sounds like you're wanting the

16   Commission to make a determination about how those

17   things are supposed to occur. The ones that you've

18   just mentioned appear numerous times in the rule.

19   It doesn't specify in the rule how that's supposed

20   to happen.

21   MR. LINHARES: Correct. It doesn't

22   specify how that's supposed to happen.

23   JUDGE BUSHMANN: That -- that sounds like

24   a rule amendment to me.

25   MR. LINHARES: That issue is a reaction to

1 the company raising objections about they're not

2 sure how to calculate these costs and they don't

3 think that they're -- they exist in the first place

4 or they -- they think they're not capable of being

5 quantified.

6   So this -- this issue is included for the

7 benefit of the company to discuss how -- how they

8 are -- they do exist and they can be quantified and

9 how they are quantified throughout the country.

10 So that's -- that's the purpose of that second

11 issue.

12   In terms of the first issue, whether the

13 -- whether the benefits that are being passed

14 through the RESRAM, or in this case, the FAC or

15 whatever it is, whether they need to be quantified.

16 We're simply asking for the Commission to verify

17 that its rule means what it means.

18   JUDGE BUSHMANN: It sure sounds like an

19 advisory opinion for a hypothetical future

20 situation where this dispute may occur that next

21 would be in the rate case, which hasn't been filed

22 yet.

23   It just seems to me that what you're

24 asking for is the Commission to make a rule of

25 general applicability that determines how these

1   things should be calculated and quantified and

2   reported as opposed to present dispute about

3   whether or not they did or didn't do it properly

4   because it's not in there.

5   So I would -- I would just suggest -- I'm

6   not going to -- I'm not insisting. I'm just

7   suggesting you consider maybe instead of filing a

8   Petition for Rule-making and converting these

9   issues into something that could be handled in the

10 rule-making process.

11   And that's in -- the Commission's rules

12 under Chapter 2, Section 180. It has a provision

13 for Petitioning for Rule-making. 536.041 also

14 applies. That would be something that you might

15 want to consider instead of going down the route of

16 an evidentiary hearing just because I'm not

17 entirely sure that this is appropriate for an

18 evidentiary hearing.

19   If you still want to go down the route of

20 an evidentiary hearing, we can do that. This is a

21 non-contested case. There's no requirement for

22 Findings of Fact or Conclusions of Law.

23   And if you want to go that route, I'm

24 going to require some briefing before we get there

25 on how -- whether or not this is an appropriate way

 1   of reaching these issues through the evidentiary

 2   hearing.

 3   MR. LINHARES: Understood.

 4   JUDGE BUSHMANN: So I guess we're -- it

 5   sounds like you want to go the evidentiary hearing

 6   route at this point; is that correct?

 7   MR. LINHARES: Well, Judge, we're planning

 8   on filing testimony this Friday. It's -- testimony

 9   is prepared and ready to be filed. And I'm

10   assuming that the company would -- is going to want

11   the opportunity to respond. And hopefully some of

12   these issues will be clarified in the -- in the

13   testimony.

14   Just -- just to be clear, I -- I take your

15   point on advisory opinions, and

16   I take your point on considering whether or not

17   this requires a revision to the rule.

18   We -- we certainly consider that neither

19   of those things are the case with -- with the case

20   that we're trying to bring here. We're simply

21   asking for implementation of the existing rule.

22   JUDGE BUSHMANN: Okay.

23   MR. LINHARES: But I'm happy to brief that

24   -- that issue if that's --

25   JUDGE BUSHMANN: I'm not comfortable that

 1   -- I would like to get a resolution of whether the

 2   Commission has the authority to even grant the

 3   relief that you're requesting before we go through

 4   the entire hearing process.

 5   So I'd like to get that set up for the

 6   front end of the process, so I'm going to need

 7   Renew Missouri to file briefs for -- or a brief

 8   discussing the legal issues I've just raised and

 9   any others that may apply. That brief should be

10   filed no later than December 3rd. The other

11   parties have until December 12th to file reply

12   briefs if they wish.

13   Also, the partial stipulation and

14   agreement only suggested dates for the filing of

15   testimony, position statements and the hearing. I

16   don't think that's sufficient. I'd like to include

17   some additional elements to the procedural

18   schedule.

19   So I'd like to see proposed dates for

20   lists of witnesses, the order of witnesses, cross

21   and opening statements, dates for a filing of a

22   Stipulation of Non-Disputed Facts and dates for

23   post-hearing briefs and reply briefs.

24   So I'd like the parties to file a Joint

25   Motion to Amend the Procedural Schedule to include

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1 those additional elements no rater than next

2 Tuesday, November 25th.

3   At any time, if Renew Missouri decides

4 that it would prefer going the route the of

5 rule-making, then you can file a Petition for

6 Rule-making. And after that, we could discuss

7 suspending or canceling the procedural schedule.

8   Any other parties wish to raise anything

9 at this point or weigh in on any of these issues

10 that I've been discussing?

11   MR. BERLIN: Judge, who is to file the

12 Joint Motion? You said Joint Motion to Amend the

13 Procedural Schedule. Would that be Renew's --

14   JUDGE BUSHMANN: I assume that -- it

15 doesn't matter to me. Does Staff -- Staff normally

16 does that --

17   MR. BERLIN: It's not our issue.

18   JUDGE BUSHMANN: -- on the procedural

19 schedule.

20   MR. BERLIN: But --

21   JUDGE BUSHMANN: Renew Missouri can file

22 it. As long as there's an agreement on these

23 dates, I don't -- that would be fine for Renew

24 Missouri to file that.

25   MR. LINHARES: Judge, could you reiterate

 1   -- reiterate the dates you'd like to see?

 2   JUDGE BUSHMANN: Renew Missouri briefs on

 3   the 3rd. Reply briefs on the 12th. And then

 4   Motion to Amend Procedural Schedule with some

 5   jointly approved dates for those other elements

 6   should be next Tuesday, December -- November 25th.

 7   MR. LINHARES: I'm sorry. What were the

 8   other elements?

 9   JUDGE BUSHMANN: That was lists of

10   witnesses -- yeah. We already know the issues. So

11   just lists of witnesses, order of witnesses, cross

12   and openings for the hearing, a date for filing a

13   stipulation of non-disputed facts.

14   I don't think there are a lot of facts in

15   dispute here, so I'd like to get a lot of that

16   cleared away before the hearing. And then a date

17   for post-hearing briefs and reply briefs.

18   Briefs on the -- are coming up just right

19   away would be the ones on the commission's

20   authority to grant the relief requested.

21   MR. OPITZ: Judge, this is Tim Opitz.

22   JUDGE BUSHMANN COURT: Yes.

23   MR. OPITZ: I'm told that I've got to

24   leave. I am traveling, so may I be excused from

25   this pre-hearing?

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 1   JUDGE BUSHMANN: You may. We're almost

 2   finished anyway.

 3   MR. OPITZ: All right. Thank you, Judge.

 4   Thank you, everyone.

 5   JUDGE BUSHMANN: Anybody else have

 6   anything they need to raise?

 7   MR. HACK: Not GMO, Judge.

 8   JUDGE BUSHMANN: All right. Then we're

 9   off the record. Thank you.

10   (The proceedings were concluded at 10:45 a.m. on

11   November 19, 2014.)

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1   REPORTER'S CERTIFICATE

2

3   STATE OF MISSOURI   )

)ss.

4   COUNTY OF OSAGE)

5

6   I, Monnie S. Mealy, Certified Shorthand Reporter,

7   Certified Court Reporter #0538, and Registered Professional

8   Reporter, within and for the State of Missouri, do hereby

9   certify that I was personally present at the proceedings as

10   set forth in the caption sheet hereof; that I then and there

11   took down in stenotype the proceedings had at said time and

12   was thereafter transcribed by me, and is fully and accurately

13   set forth in the preceding pages.

14

15

16

17

18

19   _____

20   Monnie S. Mealy, CSR, CCR #0538

21   Registered Professional Reporter

22

23

24

25

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