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

2 JUDGE BUSHMANN: We're on the record. Good  
3 morning. Today is Tuesday, March 19th, 2013. The  
4 Commission has set this time for an evidentiary hearing in  
5 the matter of the Union Electric Company, d/b/a Ameren  
6 Missouri's voluntary green program/Pure Power Program  
7 tariff filing, Case No. EO-2013-0307.

8 My name is Michael Bushmann. I'm the  
9 Regulatory Law Judge who will be presiding over today's  
10 hearing. Let's start with counsel making their entries of  
11 appearance. For Union Electric Company, d/b/a Ameren  
12 Missouri.

13 MS. TATRO: Wendy Tatro, 1901 Chouteau  
14 Avenue, St. Louis, Missouri 63103.

15 JUDGE BUSHMANN: Office of the Public  
16 Counsel.

17 MR. MILLS: On behalf of the Office of the  
18 Public Counsel and the public, my name is Lewis Mills. My  
19 address is Post Office Box 2230, Jefferson City, Missouri  
20 65102.

21 JUDGE BUSHMANN: And Staff of the Public  
22 Service Commission.

23 MS. KLIETHERMES: Of and on behalf of the  
24 Staff of the Missouri Public Service Commission, Sarah  
25 Kliethermes and Jennifer Hernandez, 200 Madison Street,

1 Jefferson City, Missouri 65102.

2 JUDGE BUSHMANN: I'd like to advise  
3 everybody in the audience to please turn off or silence  
4 any Blackberry devices or cell phones that you might have.

5 The witness list for today I have in this  
6 order: Jennifer Martin, William Barbieri and Michael  
7 Ensrud. Is that correct?

8 MS. TATRO: Yes.

9 JUDGE BUSHMANN: And we might take a few  
10 minutes now, if you have any exhibits that you want to  
11 bring forward and have marked so that we could take care  
12 of that at this point.

13 (STAFF EXHIBIT NOS. 1 AND 2 AND AMEREN  
14 EXHIBIT NOS. 1, 2 AND 3 WERE MARKED FOR IDENTIFICATION BY  
15 THE REPORTER.)

16 JUDGE BUSHMANN: At this point why don't we  
17 start with opening statements, and the first one to have  
18 opening statement is Ameren Missouri.

19 MS. TATRO: Good morning, Judge. Good  
20 morning, Commissioners. We're here today to discuss a  
21 tariffed program that Ameren Missouri has offered its  
22 customers since 2008, and we call this tariff our Pure  
23 Power Program. Sometimes it's also referred to as a  
24 Voluntary Green Program. Some of you may be some with  
25 this program and some of you may not.

1                   Today you'll hear from Ameren Missouri  
2     witness Bill Barbieri who will testify that the Pure Power  
3     Program allows Ameren Missouri customers to have renewable  
4     energy credits -- you'll sometimes hear those referred to  
5     as RECs -- purchased and retired in varying amounts in  
6     order to support renewable energy production in the state  
7     of Missouri.

8                   A REC represents the environmental, social  
9     and other non-power qualities of one megawatt hour of  
10    renewable electricity generation. There are hundreds of  
11    these programs similar to Pure Power throughout the  
12    country, and they allow customers to purchase RECs. In  
13    fact, there's even ten of these programs in the state of  
14    Missouri.

15                  The Pure Power Program is 100 percent  
16    voluntary. Customers may join or cancel at any time, and  
17    there's no penalty for doing so.

18                  Now, unlike RECs, which you may have heard  
19    are used sometimes to comply with Missouri's renewable  
20    energy standard, these RECs must come from energy  
21    generated in Missouri or able to be delivered to the state  
22    of Missouri. Pure Power RECs must also be Green-e  
23    certified, which is the gold standard in the REC arena.

24                  The Center for Resource Solutions is an  
25    organization that provides that certification, and

1 Jennifer Martin, the executive director of the Center for  
2 Resource Solutions, is here to talk to you about REC  
3 programs in general and Green-e certification today.

4 Now, Ameren Missouri does not administer  
5 the Pure Power Program itself. Instead, we have  
6 contracted with a company named 3Degrees to run the  
7 program. 3Degrees purchases the RECs and markets the  
8 tariffed program at a cost that is based upon a contract  
9 between Ameren Missouri and 3Degrees.

10 The cost to Ameren Missouri under the  
11 original contract was \$14 per REC. The original tariff  
12 charged customers \$15, with the dollar difference being  
13 retained by Ameren Missouri for the initial administration  
14 cost it incurred to start up the program, such as the  
15 initial fee paid to 3Degrees and the programming changes  
16 that were necessary to Ameren Missouri's billing programs.

17 Neither those costs nor the dollar revenue  
18 were included in the company's revenue requirement  
19 calculations in its rate cases. That tariff was first  
20 approved by this Commission in Case ER-2007-0002, over the  
21 objections of Staff.

22 In the company's next rate case,  
23 ER-2008-0318, Staff again objected to this tariff.  
24 Staff's witness was Mr. Ensrud, and he raised several  
25 objections, many of them being repeated in this case. The

1 Commission's Report and Order in that case rejected the  
2 majority of Mr. Ensrud's concerns and ordered that the  
3 tariffed program be continued.

4 As a result of that case, Ameren Missouri  
5 made changes to its marketing materials to make it even  
6 more clear to its customers that they were purchasing RECs  
7 when they participate in this program.

8 And so we come to Ameren Missouri's next  
9 rate case, ER-2010-0036. Staff again objects to the Pure  
10 Power Program. Again, the witness is Mr. Ensrud. Again,  
11 his objections are similar to those raised in the previous  
12 case. This time, however, the company and Staff were able  
13 to reach a settlement of the issue, and the company agreed  
14 to certain specific language that now appears on all  
15 educational and marketing materials and on the company's  
16 website about the program.

17 In addition, although it was not required  
18 to do so by this agreement, Ameren Missouri voluntarily  
19 started providing Staff with a copy of all educational and  
20 marketing materials. That information was provided to  
21 Staff in 2011 and 2012.

22 Then came rate case ER-2012-0142.  
23 Mr. Ensrud once again testifies about Pure Power and  
24 raises the same concerns that had been litigated  
25 previously. Because the original 3Degrees contract

1 expired in December of 2012, the parties agreed the  
2 argument was not relevant to the rate case because those  
3 rates took effect January 2nd, 2012, and instead agreed it  
4 would be dealt with outside of the rate case in this case,  
5 which brings us to this case.

6 Ameren Missouri has negotiated a new  
7 contract with 3Degrees which would continue their  
8 administration of the Pure Power Program. The most  
9 significant change is that Ameren Missouri will now pay  
10 3Degrees \$10 a REC instead of the \$14 a REC which was the  
11 cost in the previous contract.

12 Second of all, the proposed tariff does not  
13 include the additional dollar as the initial startup  
14 administrative costs have already been recovered by the  
15 company.

16 Now, in this case Staff, again through  
17 Mr. Ensrud, opposes the Pure Power Program, and his  
18 reasons are the same as the reasons he offered in previous  
19 cases, most of which have already been rejected by the  
20 Commission. For example, he warns of the risk of  
21 nonparticipating customers subsidizing the administrative  
22 costs of the program, but that very concern was raised in  
23 ER-2008-0318, and the Commission found the concern not  
24 substantial and that it did not justify any immediate  
25 accounting change.



1                   Mr. Ensrud warns that customers might be  
2    confused about the program, although now he adds an  
3    allegation that participating customers don't know that  
4    the price they're paying includes administrative costs.  
5    This argument, of course, doesn't make sense.  
6    Administrative costs are baked into anything we purchase,  
7    and that reality is hardly a reason to shut down a program  
8    that is enjoyed by literally thousands of Ameren Missouri  
9    customers.

10                   This program's a good program. It's won  
11   two national awards. In 2008 it was named the New Green  
12   Power Program of the Year. This award is jointly given  
13   out by the Environmental Protection Agency and the  
14   Department of Energy. In 2009 it was awarded Best  
15   Promotional Campaign, which is given out by the Center for  
16   Resource Solutions. Again, the executive director of that  
17   organization will be testifying today.

18                   Mr. Ensrud may not like this program, Staff  
19   may not like this program, and they should not participate  
20   in the program if that's the case, but there are thousands  
21   of Ameren Missouri customers that do like the program and  
22   do participate in the program. Those customers want to  
23   support renewable energy in Missouri, and this simply  
24   provides them with an option to do so.

25                   This Commission should not take that option

1 away from customers. You should approve the tariff, you  
2 should approve the underlying contract, and you should  
3 allow Pure Power to continue. Thank you.

4 JUDGE BUSHMANN: Thank you. Opening by  
5 Staff.

6 MS. KLIETHERMES: Good morning, Judge,  
7 Commissioner, Chairman.

8 Commissioner, I'll let you know something  
9 that the Chairman and the Judge already know, which is  
10 feel free to stop me at any time and ask any questions,  
11 especially if you just don't understand what the heck I'm  
12 saying because I probably didn't say it very good. My  
13 name is Sarah Kliethermes. I'm counsel for Staff on this  
14 matter.

15 This is from Ameren Missouri's position  
16 statement in this case. Staff's conditions would  
17 essentially impose Commission regulation upon an  
18 unregulated entity and would impose conditions which are  
19 not required from any other company with which Ameren  
20 Missouri contracts for goods or services.

21 That's true, but let's talk for a moment  
22 about jurisdiction and about the first half of that  
23 statement and what's wrong with it. Of course Staff can't  
24 impose the Commission's jurisdiction upon an unregulated  
25 entity, and the Commission can't expand its jurisdiction

1 beyond what's conveyed by its organic statutes.

2 So is Ameren Missouri misstating the  
3 effects of Staff's conditions? Well, no, but they are  
4 misidentifying the actor. Ameren Missouri is the entity  
5 seeking to promulgate a tariff sheet. Ameren Missouri is  
6 the entity responsible for demonstrating the  
7 reasonableness of the rates and terms contained on that  
8 tariff sheet.

9 Ameren Missouri can't do that. Staff has  
10 asked. Ameren Missouri's response has consistently been  
11 that Ameren Missouri possesses no information about what  
12 renewable energy developers received for a given REC  
13 retired under the Pure Power Program. And that's going  
14 back for, as Ms. Tatro said, four cases.

15 Ameren Missouri has given Staff information  
16 in the past that gives annual averages for what 3Degrees  
17 paid for RECs in a given year, but Staff has been told  
18 that Ameren Missouri does not believe 3Degrees is required  
19 to provide that information going forward. Staff  
20 disagrees with that last point, but given the highly  
21 confidential nature of that argument will ask you to look  
22 forward to reading about it in our briefs.

23 Getting back to jurisdiction, the  
24 statement, by seeking to promulgate this tariff sheet,  
25 Ameren Missouri is requesting that this Commission use its

1 authority to give a rate the force and effect of law.

2 This Commission's authority and responsibility is to  
3 authorize just and reasonable rates.

4 Well, Ameren Missouri has told Staff time  
5 and time again that Ameren Missouri doesn't know how much  
6 of a customer's \$15, or 10, actually ends up in the hands  
7 of a renewable energy developer. How can the Commission  
8 approve a rate as just and reasonable if Ameren doesn't  
9 know how much the service costs, much less if Ameren  
10 hasn't provided that information to the Commission or even  
11 its Staff?

12 We'll come back to the second part of this  
13 first sentence after we discuss what the service really  
14 is, but let me skip to the last sentence about rejecting  
15 Staff's conditions, tell you Staff agrees. The conditions  
16 are the best we can come up with to salvage the program,  
17 but the real answer is to simply reject the tariff sheet,  
18 and that is Staff's primary recommendation that this  
19 program be detariffed and that the charge not be allowed  
20 to appear on customers' utility bills.

21 What is the service? Under the current  
22 tariff language, the dollars paid under Pure Power go to  
23 the development of renewable energy technologies. Under  
24 the proposed tariff, which Staff recommends you reject,  
25 rates go to provide customers with an option to support

1 renewable energy technologies and education through the  
2 purchase of renewable energy credits.

3                   So what does the tariff say the customer is  
4 getting for paying the tariffed rate? On prior cases the  
5 Commission has decided that the retirements of RECs are an  
6 acceptable means of furthering the development of  
7 renewable energy technologies. So Staff has no problem  
8 with that revision, but throwing that word education in  
9 makes a big difference in this context. We'll come back  
10 to that.

11                   For now, let's look at what the tariff says  
12 the customer gets for paying the rate. I read, even  
13 under the new language, the tariff to say the customer is  
14 getting purchase of renewable energy credits and their  
15 retirement. I don't think that's an unreasonable reading.  
16 Under the old language, the customer gets further  
17 development of renewable energy technologies. The  
18 Commission has told Staff that the retirement of RECs  
19 equals the further development of renewable energy  
20 technologies. So that seems consistent.

21                   So a customer reading the tariff can  
22 reasonably conclude, under the old language or the new,  
23 that the rate is for the purchase and retirements of  
24 renewable energy credits. The service is the retirement  
25 of a REC. Simple enough. Fair enough. The service is

1 getting customer dollars to green energy producers. Well,  
2 how much? 100? 75? 60? 25? What percent of these  
3 dollars should be going to the green energy producers?

4 And, of course, as Ms. Tatro noted, there  
5 are transaction costs to virtually everything. Staff's  
6 position is not A on this slide, that every mil of every  
7 cent collected under the tariff end up in a wind farm in  
8 order for the rate to be authorized as just and  
9 reasonable. In fact, given the voluntary nature of the  
10 tariff, Staff's position in this case, this condition that  
11 Ameren finds so onerous, is that 60 percent of the rate go  
12 towards the tariff purpose and end up in the hands of a  
13 green energy producer.

14 But in Staff's role to provide  
15 recommendations to this Commission as to the justness and  
16 reasonableness of rates and terms, Staff simply cannot  
17 recommend that the Commission approve this tariff sheet  
18 without reasonable assurances that at least 60 percent of  
19 the dollars collected pursuant to the rate go toward the  
20 service the customer is receiving, the retirement of a  
21 REC.

22 Does Staff care how much profit 3Degrees  
23 makes or doesn't make in the transaction? No. Only  
24 incidentally in that we care how much of the customers'  
25 paid rates end up going to provide the service for which

1 the rate is paid, which is the retirement of RECs.

2 This is this question that Ameren keeps  
3 bringing up of why does Staff want to regulate 3Degrees?  
4 It's clear we do not. If this were an ordinary business,  
5 a customer could compare prices and services and determine  
6 its value, but if this were an ordinary business, there  
7 wouldn't be a commission-promulgated tariff sheet stating  
8 that the rate was just and reasonable because that's what  
9 it means when the Commission promulgates a tariff sheet.

10 How can the Commission determine the rate  
11 is just and reasonable without Ameren even telling the  
12 Commission the amount of money ultimately ending up in the  
13 hands of the green energy producer, much less whether it  
14 is a sufficient percentage of the price the customer paid?

15 Going back to that position statement in  
16 this case. Is Staff really asking the Commission to  
17 impose conditions upon 3Degrees which are not required  
18 from any other company with which Ameren Missouri  
19 contracts for goods or services? Well, maybe, because I'm  
20 not aware of any other company that Ameren Missouri  
21 contracts with where the thing contracted for is the  
22 ultimate expenditure by that contractor. It's not as  
23 though they're selling coal under their tariff. It's not  
24 as though they're selling natural gas under their tariff.  
25 Well, they are for Ameren Gas, but you get the idea.

1                   And where that expenditure is the rate,  
2   this Commission is asked to promulgate is just and  
3   reasonable, that simply is not the case with any other  
4   contractor.

5                   So again, Ameren Missouri is the party  
6   seeking out this position. Ameren Missouri is the party  
7   seeking to have the Commission promulgate a tariff bearing  
8   the rate for the service of retiring RECs. I don't think  
9   it's unreasonable for the Commission to demand to know the  
10   cost of that service to determine the value of that  
11   service to ratepayers. In fact, I think it would be  
12   unreasonable for the Commission to approve the rate  
13   without knowing the cost of service.

14                  Getting back to that point about Ameren  
15   wanting to add education to the purpose of the tariff.  
16   Why in the world does Staff have a problem with Ameren  
17   Missouri promulgating a tariff to collect ratepayer  
18   dollars to educate its customers?

19                  Well, a little bit of background on this  
20   case, and in this case and prior cases we've asked Ameren  
21   to provide the breakdown of REC dollars. They've been  
22   unable to do that on a per-REC basis, but they have given  
23   us annual averages, and we see this category of costs for  
24   education and administrative and advertising.

25                  So we asked, how does Ameren Missouri



1 distinguish between customer education and advertising?  
2 And we were told, as far as this program goes, no such  
3 distinction is made by Ameren Missouri. So why does Staff  
4 have a problem with Ameren Missouri promulgating a tariff  
5 to educate its customers? Because we don't know what  
6 education means in that context, and it appears to mean  
7 advertising.

8 Part of the reason this is such an issue is  
9 that advertising is usually a hotly contested issue in  
10 Ameren Missouri rate cases. Now, since at least the mid  
11 1980s the Commission has generally disallowed certain  
12 categories of advertising expense from utility rates while  
13 generally allowing other categories of expense.

14 Now, while the breakdown on spending varies  
15 from utility to utility and test year to test year, the  
16 categories typically allowed are what's called general and  
17 safety advertisements, and then to a greater or lesser  
18 extent promotional advertisements are partially allowed to  
19 the extent they're cost effective, and institutional and  
20 political advertisements are virtually never, if ever,  
21 allowed rate recovery.

22 Now, those terms I just threw around there,  
23 the way the Commission has typically defined those is that  
24 general is defined as informational advertising. It is  
25 useful in the provision of adequate service. Safety

1 advertising is, of course, advertising which conveys the  
2 ways to safely use electricity and avoid accidents, and  
3 that promotional advertising doesn't mean what you might  
4 think promotional would mean in most contexts. In the  
5 context of commission advertising expense, it usually  
6 means advertising used to encourage or promote the use of  
7 electricity. In other words, promoting the service. And  
8 those are all types of advertising that are to a greater  
9 or lesser extent allowed.

10 now, what is generally disallowed?  
11 Political advertising, which is pretty self evident from  
12 the name what that covers, and institutional advertising,  
13 advertising used to improve the company's public image.  
14 Keep that last one in mind as we look at some Ameren  
15 Missouri educational materials. I'll be distributing this  
16 slide later as an exhibit, but with that in mind, let's  
17 look at this educational material put out by Ameren.

18 Remember, one of Ameren Missouri's  
19 requested revisions to its tariff here is to define  
20 funding these materials as part of the service its  
21 customers receive for paying the Pure Power rate. Now,  
22 without using the highly confidential number, keep in mind  
23 the percentage of dollars collected Ameren Missouri is  
24 already spending on education. Will this percentage go up  
25 if the tariff purposes change? Staff doesn't know, and

1 Ameren Missouri has told Staff in no uncertain terms that  
2 it has no intention of telling Staff what those  
3 expenditures will be in the future.

4                   So I know you can't read this flier, but as  
5 I said, you'll be getting it in a moment, and I'll just  
6 point out what a few of the items say. RECs are good for  
7 your bottom line. Ameren Missouri's telling businesses  
8 that RECs enhance your grand reputation. Add to your  
9 sustainability story by supporting green energy. Improve  
10 consumer loyalty. Many consumers prefer to be associated  
11 with brands they perceive as supporting their  
12 environmental ideals. This is promotional material paid  
13 for and produced with Pure Power dollars.

14                   So are these educational materials  
15 educational or just downright misleading? Going back to  
16 that settlement that Ms. Tatro referred to in the 2010  
17 rate case, Ameren Missouri made a commitment to review  
18 articles by third parties related to the Pure Power  
19 Program and, to the best of its ability, not reference  
20 such articles in its marketing materials if the article  
21 contains errors in how the program functions or indicates  
22 actual energy delivery occurs.

23                   That was their responsibility to review  
24 articles produced by others that they were linking on the  
25 Ameren Missouri website. Now, this letter that went to

1 participating customers states that participating  
2 customers, as a consequence of their participation, that  
3 that customer prevented the release of XX pounds of carbon  
4 dioxide emissions each day and insured that XX kilowatt  
5 hours of renewable energy were delivered to the grid.

6 For those of you not on the Commission in  
7 each of the prior rate cases where Staff has brought these  
8 same sort of misleading advertisements to the Commission's  
9 attention, these statements are simply not true. Ameren  
10 witnesses have admitted that these sort of statements are  
11 not true. Mr. Barbieri has sat at that exact witness  
12 stand in Case No. ER-2008-0318 and admitted that not a  
13 single Ameren Missouri customer receives renewable energy  
14 as a consequence of that participation in Pure Power.

15 Yet these materials were sent to Staff in  
16 2012 repeating these same statements. These materials  
17 came out after the Commission noted that the marketing  
18 materials confused customers as to whether they received  
19 actual energy. These materials came out after Ameren  
20 Missouri committed to review errors in articles by others  
21 for misinformation about whether customers received actual  
22 energy. These materials came out shortly after it took  
23 Staff more than four months to get its concerns with the  
24 prior batch of materials addressed by Ameren Missouri.

25 In short, this is the exact same

1 misinformation Staff has called to Ameren Missouri and the  
2 Commission's attention time and time again. At some point  
3 this company simply must accept responsibility for not  
4 misleading its customers and especially not to charge its  
5 customers for the paper and ink and the time spent  
6 developing the materials to mislead them.

7 That is what adding education to the tariff  
8 purpose here will do. Staff cannot recommend that the  
9 Commission promulgate that tariff change as just and  
10 reasonable.

11 Going all the way back to Case No.  
12 ER-2007-002, the witness at the time for Ameren was a  
13 gentleman by the name of Mill, and he stated, the VGP is  
14 an optional program for customers that want to financially  
15 support the further development of renewable energy. This  
16 program is based on the purchase and retirement of RECs  
17 and not on the actual delivery of a renewable energy  
18 commodity to the customer or to the AmerenUE system.  
19 Staff agrees.

20 He went on to say in that case that it is  
21 Ameren's view that offering of a voluntary green program  
22 provides customers interested in supporting renewable  
23 energy development with an opportunity to do so. Staff  
24 agrees. Unfortunately, that's not what this program does.

25 And I know this is pretty tiny type and I

1 hate reading things aloud to you but I'm going to. Going  
2 back to Ameren's post-hearing brief in the 2008 rate case.  
3 They state, the real question is whether Ameren Missouri's  
4 program is appropriately designed so as to not confuse  
5 customers and to ensure that an appropriate amount of the  
6 customer dollars go towards supporting green power. Well,  
7 that sounds familiar to me.

8                   The percentage transferred to green power  
9 producers is appropriate and will grow over time. That  
10 was a heading in that brief where they went on to say,  
11 because of concern at least partially sparked by a  
12 discontinued REC program in Florida, Staff alleges not  
13 enough of a customer's payment ends up with the green  
14 power producer. AmerenUE agrees to monitor this aspect of  
15 the program but believes it is -- here's the important  
16 part -- believes it is premature to judge the Pure Power  
17 Program at this point in time. Pure Power has only been  
18 around for approximately one year, and the contract Ameren  
19 Missouri has with 3Degrees is for five years. The company  
20 believes the appropriate time to review this issue is at  
21 or towards the end of the five-year contract. That's  
22 where we are today.

23                   It also recognizes the Commission's  
24 interest in ensuring the program is fair to its customers  
25 and will work with 3Degrees to provide an annual

1 accounting to the Commission so that it remains informed  
2 of the amounts 3Degrees is spending on RECs,  
3 administrative costs and educational efforts.

4 Staff agrees and can't help but wonder why  
5 we're here today given these commitments. All of Staff's  
6 concerns in this case, they're all right there as noted by  
7 Ms. Tatro. This is nothing new. This is just routine  
8 failure of Ameren Missouri to deliver what it promised  
9 with this tariff sheet. Now instead of fixing what's  
10 broken in the program, Ameren Missouri asks the Commission  
11 to change the tariff. Staff just can't recommend that.

12 Staff agrees that what the contract with  
13 3Degrees -- I'm sorry. Staff agrees that the end of the  
14 contract with 3Degrees is the appropriate time to review  
15 the issues with the program. We also agree with the  
16 direction of Ameren Missouri's position statement in the  
17 0318 rate case, the same case, that the company believed  
18 those percentages spent upon REC procurement, consumer  
19 education and administrative costs at the time of that  
20 case were not unreasonable for a program that's still  
21 gearing up.

22 Well, Commission, those percentages haven't  
23 changed and the contract is concluded. Haven't  
24 substantially changed and the contract is concluded. But  
25 Staff has just not seen the improvement in the percentages

1 of dollars ending up with the green energy producers that  
2 it would need to see to recommend to the Commission to  
3 approve this tariff sheet reflects of just and reasonable  
4 rates.

5 Incidentally, what the Commission found in  
6 that case was not that the program was a good program.  
7 What the Commission found in that case was, and I quote,  
8 it was too soon to kill the program that was only one year  
9 old.

10 Going to the 2010 rate case. There was a  
11 Stipulation & Agreement. Ameren agreed to provide a  
12 disclaimer that participation does not purchase green  
13 energy, to stop stating that participants were using green  
14 energy, to review promotional materials for implications  
15 that participants were using green energy, and to provide  
16 generic information about the cost of renewable energy  
17 credits to its customers.

18 Well, that last bullet point is really what  
19 we're still looking for. What Staff's conditions do in  
20 this case is to require that Ameren Missouri get the cost  
21 information to Staff so that Staff can do the audit to  
22 provide the Commission with the recommendation about  
23 whether the REC rate is just and reasonable. But really  
24 that's also the basis of why we're telling the Commission  
25 to just get rid of this tariff.



1                   When Ameren Missouri first sought the  
2   tariff, there was no Proposition C, there weren't many  
3   wind farms in the U.S., and I'm not sure that there were  
4   any large ones in Missouri. I'm not sure if there was a  
5   production tax credit at any level, but I know it wasn't  
6   at the level that it currently exists. RECs were not a  
7   term anyone knew, and how to go online and buy them was  
8   certainly not within the knowledge of the average Ameren  
9   Missouri customer.

10                  This Commission has done a lot in the last  
11   five years to improve Missouri's renewable energy  
12   penetration. This Commission has given Ameren Missouri  
13   rates that include the Ameren renewable generation such as  
14   the Maryland Heights Renewable Energy Center.

15                  Like Ameren said several cases ago, the  
16   proper time to review the Pure Power Program is at the end  
17   of the initial contract. We're here. It's time. With  
18   all that's changed in the last five years in renewable  
19   energy in Missouri, why is Ameren Missouri asking the  
20   Commission to bend its tariff to fit a program its  
21   customers have outgrown, and why won't Ameren Missouri  
22   tell its customers the one thing its customers need to  
23   know, how can they best put their money into the hands of  
24   renewable energy producers?

25                  If there's any questions, I'm happy to do

1 my best to answer them, and the Staff witness will be  
2 available.

3 JUDGE BUSHMANN: Chairman?

4 CHAIRMAN KENNEY: Thank you. Just a quick  
5 question. So essentially Staff wants to know how much  
6 Ameren is paying to 3Degrees for the RECs, is that --

7 MS. KLIETHERMES: No. Staff wants to  
8 know -- well, to get this out of the way, Staff wants the  
9 program to go away. But if the program does not go away,  
10 Staff needs to know how many dollars are ending up in the  
11 hands of the green energy producers, since that's what the  
12 customers are after.

13 CHAIRMAN KENNEY: So you want to know what  
14 3Degrees is paying to whomever it's purchasing RECs from  
15 in the first instance?

16 MS. KLIETHERMES: Assuming that it's not --  
17 assuming that they're purchasing them directly from a  
18 green energy producer, yes.

19 CHAIRMAN KENNEY: What if they're not?  
20 What if they're purchasing them on a secondary market of  
21 some sort?

22 MS. KLIETHERMES: Sure. Then our question  
23 remains, how many of these dollars are actually ending up  
24 doing what the customers want the dollars to do?

25 CHAIRMAN KENNEY: Which is information that

1 would be in the hands of 3Degrees and not Ameren?

2 MS. KLIETHERMES: Well, this gets into a  
3 highly confidential argument that we'll be making in our  
4 brief, but I'm not so sure about that.

5 CHAIRMAN KENNEY: Okay. All right.

6 MS. KLIETHERMES: There are contract terms  
7 involved.

8 CHAIRMAN KENNEY: Can we go in-camera and  
9 talk about it?

10 MS. KLIETHERMES: Sure.

11 MS. TATRO: That's fine.

12 JUDGE BUSHMANN: Go in-camera now. Counsel  
13 are responsible for make sure that anybody in the room  
14 that doesn't have a confidentiality agreement needs to  
15 leave.

16 MS. TATRO: I think everyone else here is  
17 Staff or my clients.

18 (REPORTER'S NOTE: At this point, an  
19 in-camera session was held, which is contained in Volume  
20 2, pages 28 through 38 of the transcript.)

21

22

23

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25

1 JUDGE BUSHMANN: We're back in public  
2 session. Opening statement for Office of Public Counsel.

3 MR. MILLS: Thank you, Judge. I think at  
4 this point I can be very brief. Ms. Kliethermes said a  
5 lot of what I was going to say.

6 I just want to emphasize that the question  
7 we have today is not whether customers should have the  
8 option to purchase RECs. The question is whether the  
9 evidence that's been adduced in this case is sufficient  
10 for Ameren to meet its burden to show that the tariffed  
11 service is just and reasonable and that it does deserve  
12 to have the Commission to give its seal of approval  
13 essentially to offer this as a regulated service on the  
14 bill with the other regulated services that Ameren  
15 provides to its customers. That's the question.

16 Thank you.

17 JUDGE BUSHMANN: Thank you. First witness  
18 I have is Jennifer Martin. Ms. Martin, can you come  
19 forward, please.

20 (Witness sworn.)

21 JUDGE BUSHMANN: Counsel, you may proceed.

22 MS. TATRO: Thank you.

23 JENNIFER MARTIN testified as follows:

24 DIRECT EXAMINATION BY MS. TATRO:

25 Q. Ms. Martin, can you please identify

1     **yourself, your employer and your place of business for the**  
2     **Commission?**

3             A.       My name is Jennifer Martin, and I work for  
4     the Center for Resource Solutions. I'm the executive  
5     director there.

6             Q.       And are you the same Jennifer Martin that  
7     caused to be prefiled nine pages of surrebuttal testimony  
8     which I believe has been premarked Exhibit Ameren  
9     Missouri 3?

10            A.       Yes.

11            Q.       And do you have any corrections or  
12   additions to make to your testimony?

13            A.       I do not.

14                    MS. TATRO: All right. I move the  
15   testimony into the record and tender the witness for  
16   cross-examination.

17                    JUDGE BUSHMANN: Ameren Exhibit No. 3 has  
18   been offered. Are there any objections to the receipt?

19                    (No response.)

20                    JUDGE BUSHMANN: Hearing none, that exhibit  
21   will be received into the record.

22                    (AMEREN EXHIBIT NO. 3 WAS RECEIVED INTO  
23   EVIDENCE.)

24                    JUDGE BUSHMANN: First cross-examination is  
25   by Public Counsel.

1 MR. MILLS: Thank you.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Good morning, Ms. Martin.

4 A. Good morning.

5 Q. Are you offering yourself today as an  
6 expert in retail ratemaking for regulated, vertically  
7 integrated utilities?

8 A. No, I'm not.

9 Q. Are you offering yourself as an expert in  
10 the tariff approval process for such utilities?

11 A. No, I'm not.

12 MR. MILLS: Then I have no questions for  
13 this witness.

14 JUDGE BUSHMANN: Questions by Staff?

15 CROSS-EXAMINATION BY MS. KLIETHERMES:

16 Q. Good morning, Ms. Martin.

17 A. Good morning.

18 Q. Thank you for joining us here in Missouri  
19 this morning. Do you have a copy of your surrebuttal with  
20 you?

21 A. I do.

22 Q. Could you please turn to page 6 and the  
23 beginning of page 7?

24 MS. TATRO: Excuse me, Judge. Could I  
25 interrupt for just a moment? Could we take her opening

1 statement down?

2 JUDGE BUSHMANN: It's not appearing on the  
3 screen.

4 MS. TATRO: I just want to make sure  
5 there's no confusion of what she's asking when she's  
6 referring to that. Thank you. I appreciate it.

7 JUDGE BUSHMANN: That's fine.

8 BY MS. KLIETHERMES:

9 Q. Have you found pages 6 and 7?

10 A. Yes.

11 Q. Could you please read aloud your answer  
12 beginning on line 18 on page 6 going to line 7 on -- I'm  
13 sorry, line 3 on page 7?

14 A. The question is, how prevalent are utility  
15 green pricing programs like Ameren Missouri's? Answer:  
16 Many utilities offer their customers a green power option.  
17 According to NREL, which is the National Renewable Energy  
18 Laboratory, which collects data on green power options,  
19 utility green pricing programs are offered in 41 states.  
20 There were over 220 utilities, 53 of which are  
21 investor-utilities, that offer these programs. Including  
22 all associated cooperative and distribution utilities,  
23 there are over 860 providers offering a utility green  
24 pricing option to customers across the country.

25 Q. How many of those 860 providers did you say

1     **are utilities?**

2             A.       Those are all utilities of not -- 53 of  
3     them are investor-owned utilities. The rest are other  
4     utilities, public utilities, like cooperatives and  
5     municipalities and distribution utilities that are  
6     associated with a large utility. For example, TVA has  
7     many distribution utilities it works with and they sell a  
8     green power product offered by TVA.

9             Q.       So then what's the difference when you say  
10    **there are over 220 utilities and you refer to 860**  
11    **providers, what's the difference between those two data**  
12    **sets?**

13            A.       The 860 would include what we call sort of  
14    spokes, like distribution utilities that are associated  
15    with the main utility, for example, the TVA example I gave  
16    you where TVA is the utility and they have, I think, over  
17    60 distribution utilities that they partner with to market  
18    their green power product. So the 860 would include the  
19    distribution utilities, and the 220 would only count TVA.

20            Q.       So are there other entities that provide  
21    **RECs for resale -- I'm sorry -- at retail that are not**  
22    **utilities?**

23            A.       Yes, there are. There are companies that  
24    sell -- that are not energy providers that sell RECs as  
25    standalone products.



1 Q. Are there one or two of those?

2 A. No. There's dozens.

3 Q. And are some of those Green-e certified?

4 A. Yes.

5 Q. How many are Green-e certified?

6 A. Independent REC sellers?

7 Q. Yes.

8 A. I'm not sure I have that data with me. Let  
9 me check.

10 Q. Please.

11 A. I don't have the exact data with me, but I  
12 would estimate about 60.

13 Q. Were there 60 in 2007?

14 A. I don't know for sure, but I would say  
15 probably fewer.

16 Q. Were there -- were they Green-e certified  
17 in 2007?

18 A. Yes. We began certifying independent REC  
19 sellers, we developed our standard in 2001, and I believe  
20 the first certified sales were offered in 2002.

21 Q. And are those -- I'm sorry. Are there more  
22 Green-e certified independent REC sellers now than there  
23 were five years ago?

24 A. I don't have the data with me, but I would  
25 say probably that's true.

1           Q.       And do you consider these companies -- do  
2       you consider any of these companies reputable?

3           A.       Any of the REC sellers?

4           Q.       Yes.

5           A.       Well, based on our experience with the ones  
6       that we work with through our certification program,  
7       we've -- yes. They do deliver what is promised to their  
8       customers, and they go through our annual audits and  
9       comply with our requirements. So based on those criteria,  
10      I would say yes.

11                   MS. KLIETHERMES: Thank you. Nothing  
12      further.

13                   JUDGE BUSHMANN: Any questions by the  
14      Commissioners? Mr. Chairman?

15                   CHAIRMAN KENNEY: I don't have any. Thank  
16      you.

17                   JUDGE BUSHMANN: Commissioner Kenney?

18                   COMMISSIONER W. KENNEY: No, thank you.

19                   JUDGE BUSHMANN: There's no requirement for  
20      recross, then. Redirect by Ameren Missouri?

21                   MS. TATRO: I have no questions. Thank you  
22      for flying in from California for us.

23                   JUDGE BUSHMANN: Thank you, Ms. Martin.  
24      You may step down.

25                   Next witness is William Barbieri.

1 (Witness sworn.)

2 JUDGE BUSHMANN: You may proceed.

3 WILLIAM BARBIERI testified as follows:

4 DIRECT EXAMINATION BY MS. TATRO:

5 Q. Would you state your name and business  
6 address for the Commission, please.

7 A. My name is William Barbieri, 1901 Chouteau  
8 Avenue, St. Louis, Missouri 63103.

9 Q. And are you the same William Barbieri who  
10 caused to be prefiled in this case direct and surrebuttal  
11 testimony which I believe have been previously marked  
12 Ameren Missouri Exhibits 1HC, 1NP and 2?

13 A. I am.

14 Q. Do you have any corrections or additions to  
15 make to your testimony?

16 A. Just one correction. On the direct  
17 testimony, the date was listed as January 18 of 2012. It  
18 should have been January 18, 2013.

19 Q. Any other changes?

20 A. No other changes.

21 Q. If I were to ask you the same questions  
22 that are listed in your testimony, would your answers be  
23 substantially the same?

24 A. Yes, they would.

25 MS. TATRO: I offer Mr. Barbieri's direct

1 HC, NP and surrebuttal testimony into the record and  
2 tender him for cross-examination.

3 JUDGE BUSHMANN: Ameren Exhibits No. 1HC,  
4 1NP and Ameren Exhibit No. 2 have been offered. Are there  
5 any objections to their receipt?

6 (No response.)

7 JUDGE BUSHMANN: Hearing none, those  
8 exhibits will be received into the record.

9 (AMEREN EXHIBIT NOS. 1HC, 1NP AND 2 WERE  
10 RECEIVED INTO EVIDENCE.)

11 JUDGE BUSHMANN: Cross-examination by  
12 public Counsel.

13 MR. MILLS: Thank you.

14 CROSS-EXAMINATION BY MR. MILLS:

15 Q. Good morning, Mr. Barbieri.

16 A. Good morning, Mr. Mills.

17 Q. On page 3 of your direct testimony, you  
18 state that you've been in the energy industry for  
19 approximately 33 years?

20 A. Yes.

21 Q. And on page 1, it shows that you joined  
22 Ameren -- Ameren Services, you joined the Ameren corporate  
23 family in 1999?

24 A. That is correct.

25 Q. And where did you -- where did the

1 remaining -- the remainder of that 33 years of experience,  
2 where did that take place?

3 A. I was with Peabody Energy Company for  
4 approximately 20 years.

5 Q. So for 20 years you were with Peabody, and  
6 then for five years at Ameren you were essentially  
7 overseeing coal operations?

8 A. We were in coal development, correct.

9 Q. And then for the last approximately nine  
10 years you've been in the renewable side of things?

11 A. That is correct.

12 Q. Now, on page 5, you refer to Ameren  
13 Missouri's tariffed voluntary green program Pure Power,  
14 correct?

15 A. Yes, sir.

16 Q. So you consider Pure Power to be an Ameren  
17 program rather than a 3Degrees program; is that correct?

18 A. Yes, sir.

19 Q. But on page 7, particularly at line 11  
20 through 12, you make the statement that it is Ameren  
21 Missouri's hope that this cost decrease will allow more  
22 customers to participate in this program, correct?

23 A. I'm sorry. What line are you on, sir?

24 Q. Page 7, lines 11 through 12.

25 A. You're in the direct testimony or the

1 surrebuttal?

2 Q. I'm in direct.

3 A. I'm on page 7. Line 11 and 12 says, this  
4 restriction was put in place in order to ensure that  
5 dollars tied to the RECs were tagged toward renewable  
6 energy producers in or near Missouri.

7 Q. That's not on my version.

8 MS. TATRO: I'll give him my version.

9 THE WITNESS: I'm looking at the direct  
10 testimony here, so --

11 MR. MILLS: The sentence you just read, in  
12 my version that shows up in the previous paragraph at  
13 line 6 through 8.

14 THE WITNESS: Okay.

15 MS. TATRO: Perhaps it was a formatting  
16 change.

17 THE WITNESS: Thank you. I'm sorry. So  
18 page 11. Okay. I see.

19 BY MR. MILLS:

20 Q. Page 7, the sentence that begins a third of  
21 the way across on line 11.

22 A. It is Ameren Missouri's hope that this cost  
23 decrease will allow more customers to participate in this  
24 program.

25 Q. Correct.

1 A. Yes, sir.

2 Q. And the point of that paragraph is that  
3 Ameren Missouri is not administering the program at all;  
4 is that correct?

5 A. Not in the strictest sense.

6 Q. In what sense is it administering the  
7 program?

8 A. Well, we do process the invoices and ensure  
9 that the renewable energy credits that are provided by  
10 3Degrees meet the standards of the program.

11 Q. So you check up on them?

12 A. Yeah. It's de minimis, but right. We  
13 ensure that that is being -- that what is being provided  
14 does meet the terms of the contract, correct.

15 Q. They administer it; you simply check to  
16 make sure that they're administering some ways  
17 appropriately?

18 A. Correct. Uh-huh.

19 Q. And if that's the case, how will Ameren  
20 Missouri -- you state that it's Ameren Missouri's hope.  
21 How will Ameren Missouri effectuate that hope?

22 A. By reducing the overall program  
23 participation cost from \$15 down to \$10.

24 Q. So you don't have any further actions in  
25 mind to further that hope?

1           A.       Not at this point.

2           Q.       Okay. Do you have a copy of the testimony  
3 of Michael Ensrud there with you?

4           A.       No, sir, I do not.

5                   MR. MILLS: Judge, may I approach?

6                   JUDGE BUSHMANN: You may.

7 BY MR. MILLS:

8           Q.       Mr. Barbieri, I've handed you a copy of the  
9 rebuttal testimony of Michael J. Ensrud which I believe  
10 will be admitted into the record in this case in a few  
11 minutes, and particularly on page 4, the sentence that  
12 appears on lines 27 and 28 states that the costs  
13 associated with the Pure Power Program include joint and  
14 common costs that can not be truly determined without a  
15 cost study. Do you agree with that?

16          A.       No.

17          Q.       Okay. How would we determine the joint --  
18 the amount of joint and common costs that should be  
19 allocated to the Pure Power Program?

20          A.       Well, what we did initially -- and I don't  
21 know if we need to go in-camera for dollars being  
22 discussed.

23          Q.       I'm not asking about particular dollars.  
24 I'm just asking about the process.

25          A.       Okay. Well, the process was that there was



1 an initial administrative fee to set the program up that  
2 was paid by Ameren Missouri shareholders to set the  
3 program up initially, which is what the dollar help  
4 offset, along with any software changes that were made to  
5 the overall billing programs, to offset those costs to  
6 ensure that only those that participate in the program  
7 were paying the administrative costs. So that's Ameren  
8 Missouri's side.

9 And then from the 3Degrees side, as far as  
10 administration, they have individuals who are housed in  
11 St. Louis as employees to help, to attend different  
12 functions in promoting renewables and the Pure Power  
13 Program, such as Earth Day events and different church  
14 groups and things like that where they attend those. So  
15 those administrative costs, we are not a part of that.  
16 That's part of their overall requirement in the program.

17 Q. Correct. Perhaps you don't understand what  
18 joint and common costs are. The joint and common costs  
19 referred to here are joint and common costs with Ameren  
20 Missouri. Do you understand that?

21 A. I think I'm confused what you're -- where  
22 you're going. I'm not sure exactly what Mr. Ensrud means  
23 when he's saying this.

24 Q. Let me back up a step. Do you agree that  
25 even with 3Degrees administering the program, that Ameren

1     **Missouri will still incur some costs with respect to the**  
2     **Pure Power Program?**

3             A.       Yes, sir. We believe those to be  
4     de minimis, yes, sir.

5             Q.       Well, you may believe they're de minimis.  
6     **Do you know exactly what they are?**

7             A.       Basically, it would be my time in  
8     processing the invoices that come in on a monthly basis,  
9     which is -- only takes a few minutes because we have an  
10    automatic report. So all of the computerization has  
11    already been done, so it doesn't cost us anything more to  
12    pull the information off. It's already existing. So it  
13    comes off on a monthly basis, and then we compare those  
14    numbers against the invoices that are then presented and  
15    then those are presented for payment.

16            Q.       When you do your time sheets, did you  
17    **allocate your time to Pure Power?**

18            A.       I have, yes.

19            Q.       Do you now?

20            A.       Currently, no.

21            Q.       And the time and the expense that it's  
22    **taken to pursue this case, is that being allocated to Pure**  
23    **Power?**

24            A.       That I'm not sure.

25            Q.       You don't know that?

1 A. No, sir, I don't know that for a fact.

2 Q. Do you know exactly how much it costs to  
3 print the Pure Power billing on the bills?

4 A. No, sir, I do not.

5 Q. Is there any portion of the expense of  
6 mailing out the bills that's allocated to Pure Power?

7 A. We don't believe that there's any  
8 additional cost associated with that. It's just a line on  
9 the bill. It doesn't increase the postage for the cards,  
10 no, sir.

11 Q. So the answer to my question is no?

12 A. To my knowledge, no.

13 MR. MILLS: Judge, that's all the questions  
14 I have for this witness.

15 JUDGE BUSHMANN: Cross by Staff.

16 CROSS-EXAMINATION BY MS. KLIETHERMES:

17 Q. Good morning, Mr. Barbieri.

18 A. Good morning, Ms. Kliethermes.

19 Q. Do participating customers receive green  
20 energy as a consequence of participation in this program?

21 A. Not in Staff's definition, no.

22 Q. I've got to ask what you mean by that.

23 A. Underneath the renewable energy REC  
24 program, we do not enter into a specific power purchase  
25 agreement for the energy. That has been a contention in

1 previous discussions with Staff. Their interpretation, my  
2 understanding of their interpretation is that unless we  
3 enter into a specific power purchase agreement, that they  
4 do not get the energy.

5                   However, according to the trade  
6 association, the national trade association and others  
7 within the industry, they would say because the customers  
8 are receiving renewable energy credits from a facility  
9 that is located either in our service territory or in our  
10 RTO, that they in essence are truly receiving that energy.

11                   But because again the Staff was so  
12 concerned about we did not enter into a specific PPA, we  
13 chose not to stipulate that they are receiving energy.

14                   **Q. Do you recall me cross-examining you in**  
15 **Case No. ER-2008-0318?**

16                   A. I do believe so, yes.

17                   **Q. I'm going to read an exchange, and I'm**  
18 **going to ask if you can identify whether or not that**  
19 **generally matches your recollection of the conversation we**  
20 **had at that time.**

21                   A. Okay.

22                   **Q. Question: Do participating AmerenUE**  
23 **customers use renewable energy?**

24                   **Answer: Yes, they do.**

25                   **Question: They do?**

1 Answer: Yes, they do.

2 Question: Because of their participation  
3 in the Pure Power Program?

4 Answer: Well, prior to Proposition C,  
5 4 percent of your generation came from -- comes from the  
6 hydroelectric, and the original Senate Bill 54 that  
7 approved the target allowed for hydroelectricity to be  
8 considered as a renewable resource.

9 Question: So if a customer elects to  
10 participate in Pure Power, then AmerenUE takes measures to  
11 ensure that the electrons delivered to their residence or  
12 business are supplied from those sources?

13 Answer. That can't happen, correct.

14 Question: So do participating AmerenUE  
15 customers use renewable energy as a consequence of their  
16 participation?

17 Answer: What they do is they procure the  
18 REC. I'm not really sure if I'm following your question.

19 Question: Does participation in Pure Power  
20 cause that participating customer to use renewable energy?

21 Answer: There's no physical contract for  
22 the energy delivery, no.

23 Does that generally match with your  
24 recollection of an exchange that we had at that time?

25 A. Yes, it does.

1           Q.       And has Ameren changed anything in its  
2   circuitry that would enable Ameren to direct electrons  
3   coming from a windmill to a participating -- to a  
4   participating Pure Power customer's home or business?

5           A.       No more so than we can do with anything  
6   right now, yes.

7           Q.       Understood.

8                   MS. KLIETHERMES: I'd like to have an  
9   exhibit marked.

10                   (STAFF EXHIBIT NO. 3 WAS MARKED FOR  
11   IDENTIFICATION BY THE REPORTER.)

12   BY MS. KLIETHERMES:

13           Q.       Do you recognize this document?

14           A.       Yes, I do.

15           Q.       Is this a document that Ameren Missouri  
16   provided to Staff with an indication they would be  
17   presenting it to their customers?

18           A.       Yes.

19           Q.       And did this -- granted with the variables  
20   filled in, such as customer name, did documents such as  
21   this go out to customers?

22           A.       I believe it did.

23                   MS. KLIETHERMES: I'd like to offer Staff  
24   Exhibit No. 3, the "You Made a Big Impact in 2011"  
25   document.

1 JUDGE BUSHMANN: Any objections?

2 MS. TATRO: No objection.

3 JUDGE BUSHMANN: Staff Exhibit 3 will be  
4 received into the record.

5 (STAFF EXHIBIT NO. 3 WAS RECEIVED INTO  
6 EVIDENCE.)

7 MS. KLIETHERMES: I have another exhibit,  
8 if I may approach.

9 JUDGE BUSHMANN: You may.

10 (STAFF EXHIBIT NO. 4 WAS MARKED FOR  
11 IDENTIFICATION BY THE REPORTER.)

12 BY MS. KLIETHERMES:

13 Q. And do you recognize this document as a  
14 document that Ameren provided to Staff with an indication  
15 it would be presenting it to its customers?

16 A. Yes, I do.

17 Q. And how was this --

18 MS. KLIETHERMES: I'd like to offer Staff  
19 Exhibit 4, the commercial mailer -- I'm sorry -- the  
20 commercial handout document.

21 JUDGE BUSHMANN: Are there any objections?

22 (No response.)

23 JUDGE BUSHMANN: Staff Exhibit 4 will be  
24 received into the record.

25 (STAFF EXHIBIT NO. 4 WAS RECEIVED INTO

1 EVIDENCE.)

2 BY MS. KLIETHERMES:

3 Q. Did this document just go to Pure Power  
4 customers?

5 A. That I'm not sure. They may have used that  
6 in other handouts for different events that they sponsor.  
7 So I'm not sure it's only for -- if it only went to actual  
8 participants in the program.

9 Q. Given the information contained on here,  
10 would this be the sort of thing, if not this exact  
11 document, one much like it, that Ameren would hand out at  
12 various energy fairs, community events, hearings, that  
13 sort of thing?

14 A. Yes, it would be.

15 Q. This would be pretty widely distributed in  
16 St. Louis, in fact, in Ameren's service territory in  
17 general, correct?

18 A. I believe so, yes.

19 Q. Thank you.

20 MS. KLIETHERMES: I've got another exhibit.  
21 This will be Staff 5.

22 (STAFF EXHIBIT NO. 5 WAS MARKED FOR  
23 IDENTIFICATION BY THE REPORTER.)

24 BY MS. KLIETHERMES:

25 Q. Do you recognize this document?



1 A. Yes, I do.

2 Q. And is this your response to Staff's DR  
3 No. 11?

4 A. Yes, it is.

5 Q. Does that state, question, how does Ameren  
6 between -- distinguish between customer education and  
7 advertising? And the answer prepared by William  
8 Barbieri -- I'm sorry -- Barbieri is, no such distinction  
9 is made by Ameren Missouri?

10 A. That is correct.

11 Q. And I'm sorry. Could you please pronounce  
12 your name for me?

13 A. Barbieri.

14 Q. Barbieri. My apologies.

15 A. No problem.

16 MS. KLIETHERMES: Could I offer Staff's  
17 Exhibit 5?

18 JUDGE BUSHMANN: Any objections?

19 (No response.)

20 JUDGE BUSHMANN: Staff Exhibit 5 will be  
21 received into the record.

22 (STAFF EXHIBIT NO. 5 WAS RECEIVED INTO  
23 EVIDENCE.)

24 MS. KLIETHERMES: And I've got another one  
25 here.

1 (STAFF EXHIBIT NO. 6 WAS MARKED FOR  
2 IDENTIFICATION BY THE REPORTER.)

3 BY MS. KLIETHERMES:

4 Q. Staff Exhibit 6, another Staff DR -- I'm  
5 sorry -- another Ameren Missouri response to a Staff DR?

6 A. Yes.

7 Q. And is that response to DR No. 0023?

8 A. Yes, it is.

9 Q. And does that deal with the price paid by  
10 3Degrees or other procurers for RECs to each generator  
11 with the answer of Ameren Missouri does not have that  
12 information?

13 A. That is correct.

14 Q. And one last one.

15 MS. KLIETHERMES: I'd like to offer Staff  
16 Exhibit No. 6.

17 JUDGE BUSHMANN: Any objections?

18 (No response.)

19 JUDGE BUSHMANN: Hearing none, Staff  
20 Exhibit No. 6 will be received into the record.

21 (STAFF EXHIBIT NO. 6 WAS RECEIVED INTO  
22 EVIDENCE.)

23 (STAFF EXHIBIT NO. 7 WAS MARKED FOR  
24 IDENTIFICATION BY THE REPORTER.)

25 BY MS. KLIETHERMES:

1                   Q.       And finally is this document, Staff Exhibit  
2   No. 7, is that Ameren Missouri's response to Data  
3   Request 0037?

4                   A.       Yes, it is.

5                   Q.       And does that generally request how costs  
6   on a per REC basis were broken down, with Ameren's  
7   response that that information was provided through  
8   calendar year 2011 and that Ameren Missouri does not have  
9   this information beyond calendar year 2011?

10                  A.       That is correct.

11                         MS. KLIETHERMES: I'd like to offer the  
12   admission of Staff Exhibit 7.

13                         JUDGE BUSHMANN: Any objections?

14                         (No response.)

15                         JUDGE BUSHMANN: Staff Exhibit 7 will be  
16   received into the record.

17                         (STAFF EXHIBIT NO. 7 WAS RECEIVED INTO  
18   EVIDENCE.)

19   BY MS. KLIETHERMES:

20                   Q.       Do you have a copy of your surrebuttal  
21   testimony with you?

22                   A.       I hope.

23                   Q.       I'm sorry. Your direct testimony.

24                   A.       Not the complete one. I think they gave me  
25   a couple pages was all. The one I had evidently was not

1 up to date.

2 MS. TATRO: You don't have the schedules?

3 MS. KLIETHERMES: The schedules is what I'm  
4 interested in.

5 THE WITNESS: No. I only have -- I only  
6 have through page 7 here.

7 MS. TATRO: May I approach? I promise to  
8 have my witness better prepared next time. My apologies.

9 THE WITNESS: Thank you.

10 BY MS. KLIETHERMES:

11 Q. And would you agree that as an exhibit to  
12 your direct testimony you have the new contract with  
13 3Degrees?

14 A. Yes.

15 Q. Could you please turn to section 12 of  
16 that?

17 A. Uh-huh. Page 15?

18 Q. Sounds about right.

19 A. Okay.

20 Q. Could you review that?

21 A. Uh-huh. This is it.

22 Q. Could you turn back to the Staff Exhibit  
23 No. 7, Data Request No. 37?

24 A. All right. Uh-huh.

25 Q. Is your answer to Staff Data Request 37

1 still the same in light of your review of section 12 of  
2 that document?

3 A. Yes, it is.

4 Q. We'll see if we need to go into HC here,  
5 but see if a yes or no answer will suffice for this first  
6 part.

7 A. Okay.

8 Q. Were you involved in the drafting of  
9 provision 12.4 of that contract?

10 A. Yes, I was.

11 MS. KLIETHERMES: Okay. I would ask that  
12 we go into in-camera for a moment.

13 JUDGE BUSHMANN: All right.

14 (REPORTER'S NOTE: At this point, an  
15 in-camera session was held, which is contained in  
16 Volume 2, pages 65 through 66 of the transcript.)

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1 JUDGE BUSHMANN: We're back in public  
2 session.

3 BY MS. KLIETHERMES:

4 Q. Do you recall Ameren Missouri providing  
5 Staff with the 2010 Pure Power materials?

6 A. Yes, I do.

7 Q. Why did it take Ameren Missouri over four  
8 months to address Staff's concerns with those materials?

9 MS. TATRO: Objection. The question  
10 assumes facts not in evidence.

11 BY MS. KLIETHERMES:

12 Q. How long did it take Ameren Missouri -- I'm  
13 sorry. I'll withdraw the question.

14 How long did it take Ameren Missouri to  
15 address Staff's concerns with those materials?

16 A. I don't recall.

17 Q. Were those materials -- I'm sorry. Were  
18 those concerns finally resolved around August of 2011?

19 A. I truly don't recall. Can you -- can you  
20 remind me exactly what -- which concern you're speaking  
21 of? I might be able to recall.

22 Q. I believe there were a number of concerns.  
23 I'm looking at an e-mail dated April 14th, 2011, stating  
24 concerns with some --

25 MS. TATRO: Can the witness authenticate

1 the e-mail before you read it into the record?

2 MS. KLIETHERMES: I'm sorry. The witness  
3 asked me which concerns I was referring to. I was  
4 providing that certainty around the answer.

5 JUDGE BUSHMANN: You may want to show the  
6 witness what you're talking about.

7 BY MS. KLIETHERMES:

8 Q. This would actually be where we state  
9 preferred language (indicating).

10 A. All right.

11 MS. TATRO: Do you have a copy I can look  
12 at, please?

13 MS. KLIETHERMES: I wasn't intending to  
14 introduce it.

15 BY MS. KLIETHERMES:

16 Q. Perhaps being able to save some time here,  
17 I gather from your expression that these aren't materials  
18 you're familiar with?

19 A. I don't recall it specifically, no.

20 Q. Did counsel involve you in your  
21 discussions -- or in the discussions that occurred between  
22 Ameren counsel and Staff counsel regarding the educational  
23 materials associated with Pure Power?

24 A. I believe so. I don't know to what extent.

25 Q. And just rough time frame, do you recall

1     that discussion going from approximately April of 2011  
2     until mid to late August of 2011?

3             A.       No, I truly don't.

4             Q.       Okay. Would you agree the materials that  
5     are Staff Exhibits 4 and 3, the billing -- I'm sorry --  
6     the customer impact and the commercial handout, would you  
7     agree that those materials were provided to Staff after  
8     the discussions of the 2010 materials?

9             A.       I would assume they would have to be since  
10    they're dated 2011.

11            Q.       If you had the Ameren Missouri website  
12    available to you on the stand today, would you be able to  
13    show the Commission where generic cost information  
14    regarding renewable energy credits is located?

15            A.       Not off the top of my head.

16            Q.       Is it on the website?

17            A.       I don't recall all the pages. We've got  
18    quite a few pages.

19            Q.       Is it supposed to be on the website?

20            A.       That I don't know.

21            Q.       Does Ameren have a Pure Power Program  
22    tariffed in Illinois?

23            A.       No, we do not.

24            Q.       Did Ameren try to tariff a Pure Power  
25    Program in Illinois?



1 A. There was one offered, uh-huh.

2 Q. The Illinois Commission rejected that  
3 tariff, correct?

4 A. The company chose not to pursue it.

5 Q. The Commission did not reject the tariff in  
6 Illinois?

7 A. I don't know if the Illinois Commission  
8 specifically rejected it. I do know that the Illinois  
9 utility chose not to pursue development of the program.

10 Q. It wouldn't surprise you if the Illinois  
11 Commission rejected that tariff?

12 A. That I don't know. I don't know if a  
13 formal tariff was -- I'm not familiar with whether a  
14 formal tariff was filed with the Illinois Commission.

15 Q. Understood.

16 MS. KLIETHERMES: That's all I have for  
17 this witness. Thank you.

18 JUDGE BUSHMANN: Questions from the  
19 Commission. Mr. Chairman?

20 QUESTIONS BY CHAIRMAN KENNEY:

21 Q. Good morning.

22 A. Good morning, sir.

23 Q. How are you?

24 A. I'm good. How about yourself?

25 Q. I'm doing well. Thanks. Can you look at

1       **Staff Exhibit No. 7? It's the DR request No. 37.**

2               A.       Yes, sir.

3               **Q.       So in the question it refers to Farmer**  
4       **City. What is Farmer City?**

5               A.       Farmer City is a specific wind farm in the  
6       northwest corner of Missouri. Since 2009, the Ameren  
7       Missouri Pure Power Program has procured all of its  
8       renewable energy credits from generation at that wind  
9       farm.

10              **Q.       And so 3Degrees purchased -- purchases from**  
11       **Farmer City?**

12              A.       Yes. They have --

13              **Q.       And Ameren Missouri purchases from**  
14       **3Degrees?**

15              A.       Yes, sir. They have a specific contract  
16       between 3Degrees and Farmer City for those renewable  
17       energy credits, and then those are what are provided to  
18       Ameren Missouri for our customers.

19              **Q.       Who owns -- who owns the wind farm and to**  
20       **whom is sold the energy?**

21              A.       Iberdrola is the developer that owns it.  
22       I'm not familiar with exactly where they sell the energy  
23       or the -- if they have any specific contract for the  
24       power, as opposed to just selling it out into the market.

25              **Q.       And then looking at the contract that's**

1 attached to your direct testimony.

2 A. Yes, sir.

3 Q. And this is the provisions that you were  
4 discussing?

5 A. Uh-huh.

6 Q. In section 12.

7 A. Yes.

8 Q. Where it references in the contract TRCs,  
9 that's the same as RECs?

10 A. Yes, sir.

11 Q. So that's --

12 A. They're called -- they're either called  
13 tradable renewable credits or renewable energy credits.

14 Q. But for our purposes, those are synonymous  
15 terms?

16 A. Yes, sir.

17 Q. Okay. So all of the RECs that Ameren is  
18 purchasing to satis-- to sell to its customers come from  
19 Farmer City?

20 A. Currently, yes, sir.

21 Q. Has that been the case throughout the  
22 implementation of the Pure Power Program?

23 A. No, sir. Farmer City was not in existence  
24 at the time our program first came into existence. Over  
25 the history of the program, we have procured RECs from, I

1 believe, every wind farm in the state of Missouri. Those  
2 are owned by Associated Electric. Then there was also a,  
3 I believe a small landfill in Missouri that they also  
4 procured renewable energy credits from for a short period  
5 of time.

6 But the Farmer City contract came about  
7 while they were looking to develop that wind farm. So  
8 they were in the negotiation stages, and so 3Degrees then  
9 negotiated a contract with Farmer City before the farm was  
10 actually constructed.

11 Q. Okay. So when Ameren purchases RECs,  
12 though, does it actually get a piece of paper?

13 A. What we receive is an actual -- it's a form  
14 called an attestation form. So what it will indicate is  
15 where the -- who the supplier is, where it comes from, the  
16 quantity and the vintage of the generation.

17 Q. Okay. So let me -- let me understand,  
18 then. Looking at Staff Exhibit 6.

19 A. Yes, sir.

20 Q. And the question is asking the price paid  
21 by 3Degrees to each of the gen-- to each generator?

22 A. Yes, sir.

23 Q. Each generators for purposes of this  
24 question would be --

25 A. Farmer City.

1 Q. -- Farmer City?

2 A. Yes, sir.

3 Q. And that's the only generator?

4 A. Currently, yes, sir.

5 Q. And then Ameren's answer is it doesn't have  
6 the information.

7 A. Right. We don't have --

8 Q. Let me ask a question.

9 A. Yes, sir.

10 Q. Doesn't section 12 allow you to obtain that  
11 information, section 12 of the contract?

12 A. No, sir. We don't believe so. That's not  
13 what the intent was when we negotiated it. Section 12 was  
14 simply to allow Ameren Missouri the right to go ahead and  
15 ensure that any contract that was negotiated for RECs  
16 supplied to our program, that we would have access to that  
17 information. It wasn't intended for us to look at the  
18 specific term for the price paid between those two  
19 individuals. That was proprietary contract information.

20 Q. Say that again. It would allow Ameren to  
21 have access to the contract?

22 A. To those -- to those elements of the  
23 contract pertaining to insurance that the renewable energy  
24 credits that were provided to Ameren Missouri for our  
25 customers came from this specific generator, where it was,

1 what the generation actually was. But that element of the  
2 contract that would say here is what 3Degrees is going to  
3 pay Farmer City specifically for that REC, we are not  
4 privy to that information. That's proprietary.

5 Q. So you'd have access to the contract  
6 between 3Degrees and Farmer City?

7 A. Yes, sir.

8 Q. But it would be redacted or something?

9 A. Yes, sir.

10 Q. Where is that in the language of  
11 section 12?

12 A. It's not that specific, sir.

13 Q. Okay. So prior to this contract that's  
14 attached, there was a different contract in place between  
15 Ameren and 3Degrees?

16 A. Yes, sir. Uh-huh.

17 Q. Was it substantially the same as this?

18 A. Practically, yes, sir.

19 Q. But did it contain different provisions  
20 with respect to whatever the comparable portion of  
21 section 12 is that would allow --

22 A. Not.

23 Q. Let me finish the question.

24 -- that would have allowed Ameren access to  
25 the entire contract?

1 A. Not that I recall.

2 Q. So Ameren's never had access to that  
3 information?

4 A. Not to the pricing information, no, sir.

5 Q. So then how do you know that if you're  
6 paying 15 -- is that high--

7 MS. TATRO: You may be getting into  
8 HC information.

9 CHAIRMAN KENNEY: All right. Before I  
10 start talking about it. Sorry.

11 JUDGE BUSHMANN: Do you want to go  
12 in-camera?

13 CHAIRMAN KENNEY: Well, I don't know. Is  
14 the price per REC confidential?

15 MS. KLIETHERMES: The price you were about  
16 to say is not. The second half of that question may have  
17 been.

18 COMMISSIONER W. KENNEY: I have some  
19 questions that will be in-camera.

20 JUDGE BUSHMANN: Why don't we go in-camera?

21 (REPORTER'S NOTE: At this point, an  
22 in-camera session was held, which is contained in  
23 Volume 2, pages 77 through 92 of the transcript.)

24

25

1 JUDGE BUSHMANN: Back in public session.

2 Recross after Commission questions, Public Counsel?

3 MR. MILLS: Just very briefly.

4 RECROSS-EXAMINATION BY MR. MILLS:

5 Q. Commissioner -- Chairman Kenney asked you a  
6 question that essentially drew the analogy between  
7 purchasing RECs and contributing to a charity. Do you  
8 recall that?

9 A. Yes, sir, I do.

10 Q. Do you -- and I'm not going to ask you any  
11 specifics, but do you contribute to any charities?

12 A. Yes, I do.

13 Q. Is it important to you that the money that  
14 you contribute actually go to the purpose of the charity  
15 rather than purely to administration?

16 A. Yes.

17 Q. And do you seek out that information?

18 A. No, I do not.

19 Q. But it's important to you that that take  
20 place, though, correct?

21 A. That's why I contribute to national funds  
22 and not to small individual ones that I'm not aware of  
23 their overall purpose.

24 MR. MILLS: That's all I have. Thank you.

25 JUDGE BUSHMANN: Questions by Staff?



1 MS. KLIETHERMES: Yes, just a few.

2 RECROSS-EXAMINATION BY MS. KLIETHERMES:

3 Q. Without getting into the dollar values  
4 involved, Chairman Kenney asked you a number of questions  
5 about the dollar values actually making it into the hands  
6 of renewable energy providers. Do you recall that?

7 A. Yes.

8 Q. And you discussed your response to the data  
9 request where you stated that Ameren Missouri does not  
10 possess that information beyond calendar year 2011,  
11 correct?

12 A. That is correct.

13 Q. Did that response mention anything about  
14 you don't possess that information just due to the time  
15 and eventually you will possess that information?

16 A. No, it does not address that.

17 Q. Did you communicate that to Staff?

18 A. No, I did not.

19 Q. Does Ameren have an ongoing duty to update  
20 data requests?

21 A. I assume so. I don't know.

22 MS. TATRO: I'm going to object. That's a  
23 legal requirement. He's not an attorney. I'm not sure  
24 he --

25 JUDGE BUSHMANN: Sustained.

1 MS. KLIETHERMES: Fair enough.

2 BY MS. KLIETHERMES:

3 Q. Do you also recall the discussion with  
4 Chairman Kenney about the difficulty of communicating to  
5 customers what they may be paying -- or I'm sorry, what  
6 the cost of RECs may be? I believe your characterization  
7 was that since there's -- you know, you don't want to pass  
8 on trade secret information about what 3Degrees is paying  
9 its REC suppliers. Do you recall that discussion?

10 A. Yes, I do.

11 Q. I'm going to hand you a document. I'll  
12 show it to counsel. I apologize. I only have one copy.  
13 I didn't expect this to come up.

14 (STAFF EXHIBIT NO. 8 WAS MARKED FOR  
15 IDENTIFICATION BY THE REPORTER.)

16 JUDGE BUSHMANN: That's Staff Exhibit 8?

17 MS. KLIETHERMES: It is.

18 BY MS. KLIETHERMES:

19 Q. Does that document contain an e-mail from  
20 your counsel to myself with a copy to you and then my  
21 response to your counsel, again copying you?

22 A. Yes.

23 Q. And does that e-mail from your counsel  
24 contain what some might characterize as generic cost  
25 information about the cost of a REC?

1 A. Yes, it does.

2 Q. And does that reflect Ameren's agreement to  
3 put that information on Ameren's website?

4 A. I'm not seeing where it says to put it on  
5 the website.

6 Q. (Indicating.) I'll ask again. Does that  
7 contain your counsel's communication that, if this is  
8 okay, we'll put it on the website?

9 A. Oh, yes.

10 Q. And is there a response from me on behalf  
11 of Staff to that communication and that generic pricing  
12 information that indicates Staff is okay with that  
13 information?

14 A. Yes.

15 Q. And would you interpret that to mean that  
16 it should be placed with Staff's -- that Staff's  
17 indicating it should be placed on Ameren's website?

18 A. Yes.

19 MS. KLIETHERMES: I believe that's all.  
20 I'd like to offer Staff Exhibit 8.

21 JUDGE BUSHMANN: Any objection?

22 (No response.)

23 JUDGE BUSHMANN: Staff Exhibit 8 is  
24 received into the record.

25 (STAFF EXHIBIT NO. 8 WAS RECEIVED INTO

1 EVIDENCE.)

2 MS. KLIETHERMES: That's all I have. Thank  
3 you.

4 JUDGE BUSHMANN: Redirect by Ameren.

5 MS. TATRO: Thank you.

6 REDIRECT EXAMINATION BY MS. TATRO:

7 Q. Mr. Barbieri, Mr. Mills originally asked --  
8 the first question he asked you was that this is not an  
9 Ameren Missouri program -- this is an Ameren Missouri  
10 program, not a 3Degrees program. Do you remember that  
11 question?

12 A. Yes, I do.

13 Q. And he said Ameren Missouri's not  
14 administering the program, 3Degrees is?

15 A. That is correct.

16 Q. Does Ameren Missouri use contractors to  
17 administer other aspects of its business?

18 A. Yes, they do.

19 Q. Can you provide the Commission with  
20 examples?

21 A. I'm sorry?

22 Q. Can you provide the Commission with some  
23 examples?

24 A. Just outside contractors for tree trimming,  
25 different facilities. When we have a storm, we bring in

1 outside contractors to reestablish service. We use  
2 outside contractors, I believe, for a lot of the energy  
3 efficiency programs.

4 Q. And the energy efficiency costs, do you  
5 know if those costs are stated separately on the bill?

6 A. That I don't know.

7 Q. He also asked you -- he pointed to page 4  
8 of Mr. Ensrud's testimony where Mr. Ensrud talked about  
9 these joint and common costs and needing a cost study. Do  
10 you remember that conversation?

11 A. Yes, I do.

12 Q. Does Ameren Missouri pay 3Degrees  
13 administrative costs?

14 A. It's -- we don't pay them directly, no.  
15 It's part of the overall program. So the \$14 underneath  
16 the old program or the \$10 underneath the new program  
17 handles all the administrative costs incurred by 3Degrees.  
18 So that's really paid only by the program participants.

19 Q. So if 3Degrees has administrative costs  
20 that are above and beyond that amount, Ameren Missouri  
21 doesn't pay that?

22 A. No, we do not. Same as we wouldn't pay any  
23 price differential that they would have related to the  
24 renewable energy credits themselves. They have a  
25 contractual obligation to deliver and meet all the terms

1 of the contract for that price. So they're at risk for  
2 all of that.

3 Q. All right. And then Ms. Kliethermes asked  
4 you some questions about participating customers and  
5 whether or not they receive actual green power, and you  
6 responded not under the Staff definition which is a PPA.  
7 Do you remember that conversation?

8 A. Yes, I do.

9 Q. Can you explain what you meant by that?

10 A. And that was based on previous discussions  
11 with the Staff.

12 MS. KLIETHERMES: Judge, I'm going to  
13 object. I specifically asked him to expand on what he  
14 meant by that. That question is asked and answered.

15 JUDGE BUSHMANN: Do you have a response?

16 MS. TATRO: Well, she asked him to explain  
17 later when he said electrons delivered to the participants  
18 because there's no physical contract, but when he used the  
19 phrase PPA, she did not ask him to explain, expand upon  
20 that.

21 JUDGE BUSHMANN: To that extent, I'll  
22 overall the objection.

23 BY MS. TATRO:

24 Q. What does PPA stand for?

25 A. A PPA is a power purchase agreement. So

1 underneath one of the existing contracts that we have in  
2 order to meet our renewable energy standard for the state  
3 of Missouri, we actually have a power purchase agreement  
4 with the Horizon Wind Farm whereby they actually deliver  
5 energy and the renewable energy credit to a particular  
6 node into the grid, and basically that shows  
7 deliverability to Missouri residents, and we utilize that  
8 to meet the renewable energy standard on the books.

9                   So with a renewable energy credit, there is  
10 no such contractual obligation for energy path. You don't  
11 have to show that the energy is delivered to a specific  
12 node. You just have to be able to demonstrate that the  
13 energy actually was transmitted to the grid. So there's a  
14 big differential there.

15                   So in the past, Staff during discussions,  
16 my interpretation of Staff's concern was that if we told  
17 customers that they were receiving green energy without  
18 having contracted for the energy path, that that was  
19 misleading.

20                   But again, according to the Federal Trade  
21 Commission, as I stated earlier, according to Green-e  
22 certification, according to other certifications across  
23 the country, if you show that the renewable energy credit  
24 that you are purchasing for this program comes from either  
25 a generator in your service territory or in your RTO or

1 your NERC region, you can claim the right that not only  
2 are they getting the renewable energy credit, they have  
3 the ability to claim they are getting the energy as well.  
4 But because that was an issue that Staff had concerns  
5 with, we felt that it wasn't -- it wasn't something that  
6 we needed to pursue.

7 So we went to great lengths to change our  
8 materials at the behest of Staff to assure them that  
9 people truly understood that we were not procuring for the  
10 specific energy but we were getting the REC associated  
11 with that energy, even though all these other agencies  
12 that I just stipulated would have legally allowed Ameren  
13 to tell its customers who participate in the program that  
14 they are truly getting green energy.

15 MS. TATRO: May I approach?

16 JUDGE BUSHMANN: You may.

17 (AMEREN EXHIBIT NO. 4 WAS MARKED FOR  
18 IDENTIFICATION BY THE REPORTER.)

19 BY MS. TATRO:

20 Q. Mr. Barbieri, do you recognize this  
21 document?

22 A. I didn't get one. Got one now. Yes, I do.

23 Q. Can you identify it, please?

24 A. Yes. It's the Guide to Green Purchasing  
25 Power. It's put out by the United States Department of



1 Energy.

2 MS. KLIETHERMES: Judge, I'm going to  
3 object to discussion of this document. On its face it's a  
4 Guide to Purchasing Green Power. It's clear that  
5 customers do not purchase green power under this program,  
6 and this is far and beyond in excess of anything that was  
7 discussed on anyone's cross-examination or any of the  
8 questions from the Bench and, therefore, exceeds the scope  
9 of cross.

10 JUDGE BUSHMANN: What's your response?

11 MS. TATRO: Well, as to the first portion  
12 as to whether or not this only deals with power, I will  
13 demonstrate that when we go through the document. There's  
14 a specific reference that says if you purchase a REC, that  
15 is the same as purchasing green power.

16 MS. KLIETHERMES: Judge, that was not  
17 discussed at all in Mr. Barbieri's direct or surrebuttal.  
18 This is a new matter being raised here and it's  
19 inappropriate.

20 MS. TATRO: It was in response to a  
21 question from Ms. Kliethermes as part of her  
22 cross-examination. I have a right to follow up on it.

23 JUDGE BUSHMANN: I believe that's correct.  
24 There was another part to your objection, wasn't there,  
25 Ms. Kliethermes?

1 MS. KLIETHERMES: That it exceeds the scope  
2 of cross by far.

3 MS. TATRO: And I believe it's in direct  
4 response.

5 JUDGE BUSHMANN: I'll give you some leeway  
6 then to establish that link.

7 MS. TATRO: Thank you.

8 BY MS. TATRO:

9 Q. Mr. Barbieri, can you turn to page -- wrong  
10 page. Sorry -- page 10?

11 A. Page 10? Yes.

12 Q. On the right-hand column, can you read the  
13 first full paragraph?

14 A. RECs may be sold bundled, paired by the  
15 electric service provider with grid electricity delivered  
16 to the buyer, or unbundled from electricity as a  
17 standalone product and paired by the buyer with its grid  
18 electricity purchase. RECs combined with plain grid  
19 electricity are functionally equivalent to green power  
20 purchases from a local utility no matter where the REC may  
21 be sourced. Purchasers of RECs may make claims about  
22 their purchase of green power similar to purchasers of  
23 renewable electricity products.

24 Q. So in the viewpoint of the Department of  
25 Energy and the other organizations listed here, a customer

1     **who purchases RECs has the right to claim that they are**  
2     **receiving green energy?**

3             A.       That is correct.

4             **Q.       Is that your interpretation of that**  
5     **paragraph?**

6             A.       That is correct.

7                     MS. TATRO: I would move to put Ameren  
8     Missouri 4 in the record.

9                     JUDGE BUSHMANN: Any objections?

10                    MS. KLIETHERMES: I object to the admission  
11     of this document as a whole. She has discussed and he  
12     said he's familiar with one paragraph on one page, and  
13     this is a 52-page document.

14                    MS. TATRO: If I didn't provide the entire  
15     document, then Staff would object that I may be taking the  
16     quote out of context.

17                    JUDGE BUSHMANN: I'm going to overrule the  
18     objection. Public Counsel have any objections?

19                    MR. MILLS: Yeah, Judge. I'll object on  
20     the basis of foundation. I don't think this witness has  
21     demonstrated that this is the kind of document that he  
22     relies on, that he has any -- that he had any input into  
23     preparing it or that he has any opinion as to its  
24     authenticity. None of that was raised in the foundational  
25     questions.

1 JUDGE BUSHMANN: Public Counsel raises a  
2 point on authentication. Ms. Tatro, do you want to ask  
3 some additional questions and see if the witness can  
4 establish a foundation?

5 MS. TATRO: Yes.

6 BY MS. TATRO:

7 Q. Did you have a role in preparing this  
8 document?

9 A. No, I did not.

10 Q. Have you reviewed this document in relation  
11 to how it relates to Ameren Missouri's Pure Power Program?

12 A. Yes, I have.

13 Q. And is this document the type that  
14 companies that provide Pure Power type REC programs, does  
15 it establish the guidelines those companies follow?

16 A. Yes, it does.

17 MS. KLIETHERMES: I'm going to object to  
18 the extent that calls for speculation. Ask that his  
19 answer be stricken. He doesn't know what other utilities  
20 may or may not rely on.

21 MS. TATRO: Let me rephrase.

22 BY MS. TATRO:

23 Q. Okay. To the best of your knowledge and  
24 experience with other providers of REC programs, do they  
25 rely on this -- these guidelines?

1 A. Yes, they do.

2 MS. TATRO: I would again move it into the  
3 record.

4 JUDGE BUSHMANN: Based on those answers,  
5 I'm going to admit this into the record as Ameren Exhibit  
6 No. 4.

7 (AMEREN EXHIBIT NO. 4 WAS RECEIVED INTO  
8 EVIDENCE.)

9 MS. TATRO: Thank you.

10 JUDGE BUSHMANN: Anything further,  
11 Ms. Tatro?

12 MS. TATRO: Yes.

13 BY MS. TATRO:

14 Q. Ms. Kliethermes talked to you about what  
15 was labeled Staff Exhibit 5, which was Data Request 11 to  
16 Ameren Missouri.

17 A. Yes, I have it here.

18 Q. And I believe you talked about how the  
19 answer was that there's -- that Ameren does not  
20 differentiate between advertising and marketing?

21 A. As it relates to this, correct.

22 Q. Can you explain why?

23 A. Well, basically, again, it's an overall  
24 program. So when we pay 3Degrees the \$14 underneath the  
25 existing program, we don't know specifically how much of

1 that is going towards the overall community events that  
2 they sponsor, what they're paying in salaries to the staff  
3 people that are located the St. Louis and things of that  
4 nature.

5 My confusion with this would simply be, how  
6 would you differentiate between education and advertising?  
7 Some of the exhibits that they put forth to us, I would  
8 claim that these are definitely educational materials, and  
9 that could be -- again, as Ms. Kliethermes had indicated,  
10 she -- I believe she indicated that she thought some of  
11 these were marketing materials. But I believe that the  
12 information that we have for the most part is educational  
13 material, and that's my opinion of what the -- what that  
14 is.

15 And so in answering this question, I wasn't  
16 able to really differentiate what did they really mean  
17 by -- what would differentiate something as an educational  
18 piece of material versus what would be something that  
19 would be classified as an advertising piece of material.

20 Q. Okay. And next Ms. Kliethermes talked to  
21 you about the contract with Pure Power?

22 A. Yes.

23 Q. Do you still have that contract with you?

24 A. Yes, I do.

25 Q. Can you turn to section 12, please. I

1     **believe it's on page 15.**

2                     JUDGE BUSHMANN: Do we need to go back  
3     in-camera for this since it's HC?

4                     MS. TATRO: Yes, we do. Thank you.

5                     (REPORTER'S NOTE: At this point, an  
6     in-camera session was held, which is contained in  
7     Volume 2, pages 109 through 112 of the transcript.)

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1 JUDGE BUSHMANN: We're back in public  
2 session.

3 BY MS. TATRO:

4 Q. Mr. Barbieri, Ms. Kliethermes spoke with  
5 you about problems, what she referred to as problems with  
6 the 2011 materials.

7 A. Yes.

8 Q. Do you remember that conversation?

9 A. Yes, I do.

10 Q. If Staff indicated they had concerns with  
11 the -- with the materials, what would you have attempted  
12 to do?

13 A. We would have attempted to negotiate with  
14 the Staff to resolve those, as we have in the past.

15 Q. And the last exhibit that Ms. Kliethermes  
16 put in the record, Exhibit 8, which was the e-mail  
17 exchange between yourself and I.

18 A. Right. I don't have that in front of me,  
19 but I recall it, uh-huh.

20 Q. If that information is not on the website,  
21 why would that be?

22 A. Just probably oversight.

23 Q. Is that something the company would be  
24 willing to correct if required by the Commission?

25 A. Yes, it would. Uh-huh.



1           Q.       Now, the Chair asked you some questions  
2 about the contract, about 3Degrees' contracts. I'm not  
3 going to ask you about HC information. But you talked  
4 about who actually procures the RECs. Do you recall that  
5 conversation?

6           A.       Yes.

7           Q.       And just to clarify, who's actually  
8 procuring the RECs from the renewable energy generator?

9           A.       3Degrees.

10          Q.       And then how does Ameren Missouri get them?

11          A.       Then once 3Degrees gets the attestation  
12 form from the developer, then Ameren Missouri then pays  
13 3Degrees. 3Degrees then transfers those RECs to an  
14 inventory balance that we maintain on behalf of our  
15 customers. We get that attestation form that verifies  
16 where they came from. Then once the customer pays Ameren  
17 Missouri for the associated renewable energy credit, then  
18 we pay the balance of the fee to 3Degrees and then  
19 formally retire the REC through just a -- just a paper  
20 transaction.

21          Q.       All right. Then the Chair also asked you  
22 how Ameren Missouri knows what value it's getting for the  
23 \$15 if you don't know what amount is being paid to the  
24 generator for the REC. Do you remember that conversation?

25          A.       Yes, I do.

1                   **Q.       Did Ameren -- how did Ameren Missouri first**  
2       **select 3Degrees?**

3                   A.       We did a --

4                   MS. KLIETHERMES: Judge, I'm going to  
5       object. That is far -- that's not in any way related to  
6       the question that the Chairman posed that she prefaced the  
7       question with. It exceeds the scope of cross.

8                   MS. TATRO: It's related to the value,  
9       because part of his answer is going to be that he bid the  
10      program out.

11                  MS. KLIETHERMES: I'm sorry. Did she just  
12      state what his answer's going to be? There's just --

13                  MS. TATRO: I'm proffering that so that you  
14      can understand where I'm going.

15                  JUDGE BUSHMANN: Well, I don't think it  
16      exceeds the scope. So you can ask that question.

17      BY MS. TATRO:

18                  **Q.       I think the question that I asked you was**  
19       **how was 3Degrees selected to administer this program on**  
20       **behalf of Ameren Missouri?**

21                  A.       We issued a request for proposal to  
22      various -- basically made it open to any renewable --

23                  MS. KLIETHERMES: Judge, I'm actually going  
24      to object to the form of the question on another ground  
25      that it's ambiguous. She didn't specify whether this was

1 for the initial contract term or the second contract term.

2 MS. TATRO: For the initial contract term.

3 JUDGE BUSHMANN: You may answer.

4 THE WITNESS: Okay. For the initial  
5 contract term, we put out a public request for proposal,  
6 got proposals in from several different suppliers, and we  
7 chose 3Degrees based on the overall price that they would  
8 charge for the program and follow-up materials based on  
9 interviews that we did with other utilities that have  
10 utilized 3Degrees with similar programs.

11 BY MS. TATRO:

12 Q. And do you know how that price, the \$15 I'm  
13 talking about, do you know how that compares with other  
14 REC programs in the U.S.?

15 A. Currently, the most recent information from  
16 the National Renewable Energy Lab would say that the  
17 average median price for these types of programs across  
18 the country is about \$16 and some of them in the \$15 range  
19 for the median price.

20 Q. All right. And the Chairman also asked you  
21 how the Commission -- how the Commission can determine  
22 reasonableness if it doesn't know the cost that's  
23 attributable to the RECs. Do you -- in your non-legal  
24 opinion, do you believe the Commission has to have the REC  
25 price in order to be able to make a determination on the

1     **reasonableness of its price?**

2             A.     Not in my opinion, no.

3             **Q.     And why is that?**

4             A.     Well, because again it's an overall  
5     program. So it's not simply the REC. It's everything  
6     they goes with that program. And so again, our concern  
7     was to ensure for our customers that they were getting a  
8     program that was priced accordingly. So we looked at,  
9     again, pricing for similar programs not only across the  
10    country but specifically looked at programs related to  
11    here in the state of Missouri and found that our program  
12    price would be well below the average for those specific  
13    programs in Missouri.

14            **Q.     And the Chairman also talked about a do--**  
15    **he said like a donation.**

16            A.     Uh-huh.

17            **Q.     And then I believe Mr. Mills followed up by**  
18    **calling it a charitable contribution. Do you believe**  
19    **those are fair comparisons?**

20            A.     Not necessarily, no.

21            **Q.     And what would be the difference?**

22            A.     Well, because with the overall contribution  
23    that you're making or the participation that you're making  
24    in the program, it's actually being utilized, a piece of  
25    this is actually being utilized by the wind developers

1 that we purchase this from, and I think that's indicative  
2 of the -- specifically the contract that we have with  
3 Iberdrola. That was definitely a financial decision that  
4 enabled them to move forward with this particular wind  
5 farm. They have told us so on a couple of occasions. To  
6 what degree that is, I can't -- I can't speculate, but  
7 it's not just simply making a donation in the form of how  
8 like you do a charitable donation.

9 MR. MILLS: Judge, I'm going to object and  
10 ask that a portion of that last answer be stricken. The  
11 portion where he talked about what Iberdrola told them is  
12 hearsay. There's no foundation it. There's no relevant  
13 exception to the hearsay rule that would allow that in.

14 MS. TATRO: I believe that's the -- I  
15 believe that's the type of information that an expert  
16 witness can rely upon when they're determining what we  
17 were talking about, which is the cost and whether it's a  
18 good value or not.

19 JUDGE BUSHMANN: I'll overrule.

20 MS. TATRO: I have no further questions.

21 JUDGE BUSHMANN: Thank you, Mr. Barbieri.  
22 Your testimony is now concluded. You may step down.

23 CHAIRMAN KENNEY: I have a question.

24 FURTHER QUESTIONS BY CHAIRMAN KENNEY:

25 Q. You just made mention of the fact that

1 Iberdrola communicated certain information to you, and I  
2 know it was objected to. Why not just buy the RECs  
3 directly from Iberdrola?

4 A. Again, the company would then have to hire  
5 individuals to market the program and do everything else  
6 that's associated with it. And so what we had decided was  
7 we would rely on an expert, just like we do in a lot of  
8 our energy efficiency programs where we hire outside  
9 contractors to handle all of that.

10 Q. Can I assume, though, that by virtue of the  
11 fact that Ameren has had direct conversations with  
12 Iberdrola about purchasing from them, that Ameren then  
13 would have some knowledge of this proprietary information  
14 about the cost of the RECs from Iberdrola to 3Degrees?

15 A. No, sir. The information that we have from  
16 Iberdrola was simply during the previous rate case when  
17 the Staff was concerned whether or not purchasing RECs  
18 really did lead to the development of renewable  
19 generators. We contacted Iberdrola just to find out, you  
20 know, did that really play a part in your decision.

21 CHAIRMAN KENNEY: All right. Thank you.

22 JUDGE BUSHMANN: Any recross based on that  
23 question?

24 MS. KLIETHERMES: Yes, Judge.

25 JUDGE BUSHMANN: Go ahead.

1 FURTHER RECROSS-EXAMINATION BY MS. KLIETHERMES:

2 Q. I believe the Chairman's question was  
3 whether or not Ameren has this information from Iberdrola  
4 for purposes of Pure Power Program. Does Ameren obtain  
5 information about the price of RECs for its other REC  
6 purchases such as compliance with Proposition C?

7 A. Yes, to does.

8 Q. And is Ameren able to obtain actual per-REC  
9 pricing information?

10 A. For Proposition C compliance?

11 Q. Yes.

12 A. Yes. Uh-huh. Because we're buying  
13 directly. We're only buying the REC directly. So  
14 whatever we pay is associated with that, but that could  
15 also include any administrative cost that the broker has  
16 when they pay. So we have one price that we pay for the  
17 SREC in particular. Those are predominantly what we have  
18 purchased in the open market from brokers.

19 So there is a fee there, but it's what we  
20 are paying to the broker. So whatever additional  
21 transactional costs are between the broker and what they  
22 actually pay for the REC, we do not have that information,  
23 no.

24 MS. KLIETHERMES: That's all I have. Thank  
25 you.

1 JUDGE BUSHMANN: Any redirect?

2 MS. TATRO: No. I think she asked my  
3 question for me. Thank you.

4 COMMISSIONER W. KENNEY: I have a question  
5 for you. Can I -- I'd like to find out -- or I don't know  
6 if I can ask or not, but supposedly there was an agreement  
7 in place and that kind of blew up. Can I ask something  
8 like that of the witness?

9 MS. TATRO: I think he's talking about the  
10 settlement discussions that we had, which, of course, are  
11 confidential and we are not allowed to discuss.

12 COMMISSIONER W. KENNEY: All right. That's  
13 fine. Thank you.

14 JUDGE BUSHMANN: Settlement discussion.  
15 Okay. Thank you. Mr. Barbieri, you may step down.

16 THE WITNESS: Thank you.

17 JUDGE BUSHMANN: Why don't we take a break,  
18 maybe 20 minutes. We'll be in recess until 11:15.

19 (A BREAK WAS TAKEN.)

20 JUDGE BUSHMANN: Go back on the record.  
21 The next witness we have is Michael Ensrud. Mr. Ensrud.

22 (Witness sworn.)

23 JUDGE BUSHMANN: You may proceed.

24 MICHAEL ENSRUD testified as follows:

25 DIRECT EXAMINATION BY MS. KLIETHERMES:



1           Q.       Good morning, Mr. Ensrud. Could you please  
2 spell your last name for the court reporter?

3           A.       E-n-s-r-u-d.

4           Q.       And could you please state your position  
5 and your business address?

6           A.       I am a Rates and Tariff Analyst No. 2 with  
7 the Public Service Commission here at 200 Madison Street,  
8 Jefferson City, Missouri.

9           Q.       Thank you. And did you prepare any  
10 rebuttal testimony in this matter?

11          A.       I did.

12          Q.       And is that labeled as Exhibits, I believe,  
13 1NP and 2HC, or I may have those designations reversed?

14          A.       That's my understanding.

15          Q.       And do you have any changes or corrections  
16 to that testimony, bearing in mind that those corrections  
17 may be highly confidential?

18          A.       I do on both of them, and they are.

19                   MS. KLIETHERMES: Could we please go  
20 in-camera very briefly?

21                   JUDGE BUSHMANN: Yes.

22                   (REPORTER'S NOTE: At this point, an  
23 in-camera session was held, which is contained in  
24 Volume 2, page 123 of the transcript.)

25

1 JUDGE BUSHMANN: Did you want to offer  
2 those exhibits, Ms. Kliethermes?

3 MS. KLIETHERMES: Yes. I'm sorry. Staff  
4 offers rebuttal testimony of Michael Ensrud, Staff  
5 Exhibits 1 and 2.

6 JUDGE BUSHMANN: Any objections to receipt  
7 of those exhibits?

8 (No response.)

9 JUDGE BUSHMANN: Staff Exhibit No. 1HC and  
10 Staff Exhibit No. 2NP will be admitted into the record.

11 (STAFF EXHIBIT NOS. 1HC AND 2NP WERE  
12 RECEIVED INTO EVIDENCE.)

13 MS. KLIETHERMES: And, Judge, could I  
14 clarify that the exhibits that I introduced under  
15 Mr. Barbieri were all offered and accepted? I believe  
16 they were. Just to confirm.

17 JUDGE BUSHMANN: Yes, they were.

18 MS. KLIETHERMES: Thank you.

19 JUDGE BUSHMANN: Cross-examination by  
20 Public Counsel?

21 MR. MILLS: Just briefly.

22 CROSS-EXAMINATION BY MR. MILLS:

23 Q. Mr. Ensrud, can a customer be disconnected  
24 for not paying the Pure Power portion of their electric  
25 bill?

1 A. No.

2 Q. Is that fact communicated in any of the  
3 marketing materials that you've seen?

4 A. No, not that I know of.

5 Q. How would customers become aware of that  
6 fact?

7 A. It is in the tariff, if I remember right,  
8 but short of reading the tariff or calling the Commission,  
9 I -- I don't know what response would happen if you call  
10 Ameren and try to -- informed them of that.

11 Q. And in your experience, how many -- and  
12 you've been in the utility industry for quite a while,  
13 correct? Years?

14 A. Yes.

15 Q. In your experience, how many customers  
16 actually look at tariff sheets?

17 A. Unless they're an industrial type, very  
18 few.

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

21 JUDGE BUSHMANN: Cross-examination by  
22 Ameren Missouri?

23 MS. TATRO: Thank you.

24 CROSS-EXAMINATION BY MS. TATRO:

25 Q. Mr. Ensrud, this is not the first time

1     **you've testified on Ameren Missouri's Pure Power Program,**  
2     **is it?**

3             A.       No, it's not.

4             Q.       **And you're familiar with the history of the**  
5     **program?**

6             A.       Fairly, yes.

7             Q.       **All right. When did Ameren Missouri first**  
8     **offer the Pure Power Program?**

9             A.       2007, but they first reported stuff for  
10    2008. We have nothing for that period before that.

11            Q.       **And would that have been the rate case**  
12    **ER-2007-002 when the tariff was initially offered?**

13            A.       I'm not absolutely certain. It sounds  
14    right to me.

15            Q.       **Okay. Were you the witness in that case?**

16            A.       There was one where Ms. Mantle was a  
17    witness initially, and I believe that -- if that was the  
18    very first case, I believe that was Ms. Mantle.

19            Q.       **And do you know whether she supported or**  
20    **opposed the program?**

21            A.       I believe she opposed the program.

22            Q.       **And despite Staff's opposition, did the**  
23    **Commission approve the tariff?**

24            A.       Correct.

25            Q.       **So when is the first time you testified in**

1 front of the Commission on this issue?

2 A. I think it was -- what is it? I know 318  
3 is the case. I think that's -- what is that, 2009?

4 Q. How about ER-2008-0318, does that sound  
5 right?

6 A. Yeah.

7 Q. And you were the witness for Staff?

8 A. Yes.

9 Q. The only witness for Staff on that issue?

10 A. Yes, I believe so.

11 Q. Okay. And you raised the issue of not  
12 knowing how much 3Degrees was paying the renewable  
13 generators for the RECs at that time, correct?

14 A. Correct.

15 Q. And you raised the concern which stemmed  
16 from the Florida Sunshine Program as an example of a  
17 Commission ending a program at that time; is that correct?

18 A. Correct.

19 Q. And you raised the issue of Ameren  
20 Missouri's other customers potentially subsidizing the  
21 cost of Pure Power at Ameren Missouri; is that correct?

22 A. Yes. I believe that -- I believe that from  
23 memory to be an issue that I brought up from the very  
24 beginning.

25 Q. Okay. And would you agree that that case

1 was fully litigated?

2 A. Yes.

3 Q. Multiple rounds of testimony were filed?

4 A. Correct.

5 Q. You took the witness stand?

6 A. Correct.

7 Q. You were cross-examined?

8 A. Yes.

9 Q. And ultimately the Commission made a  
10 determination on your allegations, didn't they?

11 A. Yes.

12 Q. And did the Commission decide to cancel the  
13 tariff at that time?

14 A. No. They said it was premature to cancel.

15 Q. Okay. Did they indicate on the  
16 subsidization issue that the identified potential cost was  
17 not substantial?

18 A. If I remember right, they cite that you  
19 guys claim that and we didn't offer enough. I don't know  
20 if they came to the conclusion -- well, I guess in a way  
21 they would. If they said that we did not supply enough  
22 information to refute it, that would be -- that would  
23 translate to them accepting it, to some degree anyway.

24 Q. Okay.

25 (AMEREN EXHIBIT NO. 5 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 BY MS. TATRO:

3 Q. This is an excerpt of the Commission's  
4 Report and Order. I hope the Commission will forgive me,  
5 but I decided not to kill all the trees by copying the  
6 entire order, but I believe I have captured the entire  
7 portion of the order that deals with the Pure Power issue.  
8 Would you look through that and see if you agree?

9 A. Yes. I believe this to be the complete --  
10 the complete part of the order.

11 Q. And could you turn to page 108, please?

12 A. Sure.

13 Q. In the paragraph that carries over on that  
14 page, so the top paragraph there, can you read the last  
15 two sentences in that paragraph for me, please?

16 A. The carryover?

17 Q. The carryover paragraph.

18 A. Staff is concerned?

19 Q. Yes, please.

20 A. Staff is concerned, for example, that the  
21 cost of billing customers who participate in Pure Power is  
22 not segregated from the cost of billing other customers.  
23 However, the maximum potential cost identified by Staff is  
24 not substantial and does not justify an immediate  
25 accounting change.

1           **Q.       So the Commission did not order Ameren**  
2 **Missouri to do anything differently in terms of tracking**  
3 **costs related to Pure Power, correct?**

4           A.       The order clause, I don't --

5           **Q.       The section you just read.**

6           A.       -- I did not.

7           **Q.       And did you identify any costs in this case**  
8 **that you did not identify in that case?**

9           A.       I believe I -- I raised the spectrum that  
10 the cost of the proceeding is a discrete cost that should  
11 be paid. I don't know if I talked about the cost of  
12 conducting a proceeding in the earlier one. So that one  
13 may be -- be new as to the idea that -- that I know we  
14 have had this discussion between joint and common costs  
15 and discrete costs, and from a discrete cost, the cost of  
16 the case I think is new from what I've offered in other  
17 cases. At least that's my memory of the situation.

18           **Q.       Did you offer any additional joint and**  
19 **common costs in this case that you did not offer in the**  
20 **0318 case?**

21           A.       No. You can't do that without a study.

22                   MS. TATRO: Okay. I would offer Exhibit 5  
23 into the record.

24                   JUDGE BUSHMANN: Any objections?

25                   MS. KLIETHERMES: No objection.



1 JUDGE BUSHMANN: Staff -- or excuse me.  
2 Ameren Missouri Exhibit No. 5 will be received into the  
3 record.

4 (AMEREN EXHIBIT NO. 5 WAS RECEIVED INTO  
5 EVIDENCE.)

6 MS. TATRO: Thank you.

7 BY MS. TATRO:

8 Q. Then did this issue come up again in an  
9 Ameren Missouri rate case?

10 A. I believe after I raised it initially, I've  
11 raised it in every subsequent one.

12 Q. Okay. So it would have been in  
13 ER-2010-0036?

14 A. I believe it was.

15 Q. And you raised similar concerns to those  
16 you've raised here today?

17 A. As I -- with the same caveat as before. I  
18 think I threw in a new -- a new issue of cost in that the  
19 cost of the proceeding is a discrete cost that should be  
20 paid for.

21 Q. Okay. And do you know if that issue was --  
22 if your arguments on Pure Power was fully litigated in  
23 front of the Commission?

24 A. Some were. Some in -- some cases were  
25 settled by settlement.

1 Q. Okay. Do you know if this one was settled  
2 by stipulation?

3 A. Which one?

4 Q. ER-2010-0036.

5 A. I believe that was by settlement.

6 Q. I really didn't mean this to be a memory  
7 test, so let me refresh your recollection and make it a  
8 little bit easier for you.

9 A. I appreciate that.

10 (AMEREN EXHIBIT NOS. 6 AND 7 WERE MARKED  
11 FOR IDENTIFICATION BY THE REPORTER.)

12 BY MS. TATRO:

13 Q. Let's start with No. 7. That's the  
14 Stipulation & Agreement from ER-2010-0036?

15 A. Yes.

16 Q. And was Pure Power addressed in this  
17 stipulation?

18 A. Yes, that's my --

19 Q. Look on page 5. And was part of that  
20 resolution that Ameren Missouri agreed to provide certain  
21 language on its websites and Pure Power materials?

22 A. It was.

23 Q. And to your knowledge, has Ameren Missouri  
24 been providing -- been placing that information on its  
25 website and materials?

1           A.       Basically, what I reviewed of the website,  
2   and it usually is there one time.

3           **Q.       Okay. Which is what's required by the**  
4   **stipulation, right?**

5           A.       Yeah. I don't -- I don't remember, recall  
6   or read here where it's recalled to be on any of the  
7   multiple pages that are put in there. It just simply says  
8   it should be there.

9           **Q.       And then in ER-2012-0166, which was Ameren**  
10   **Missouri's last rate case, you were the witness again on**  
11   **Pure Power?**

12          A.       I was.

13          **Q.       And you raised the same issues that you're**  
14   **raising here today?**

15          A.       With the caveat that I don't think I -- I  
16   talked about the legal expense of litigating it. I don't  
17   recall anything substantially different.

18          **Q.       Okay. And what did the -- and the company**  
19   **and Staff entered into a stipulation on this issue, right?**

20          A.       They did.

21          **Q.       And what was the resolution?**

22          A.       For 166, that there'd be another -- that  
23   there would be another hearing where this would be carved  
24   out and dealt with outside the context of a full rate  
25   case.

1 Q. And that's what this case is, right?

2 A. That's what this case is.

3 MS. TATRO: Before I forget, I would move  
4 for the admission of 6 and 7.

5 JUDGE BUSHMANN: Any objections?

6 MS. KLIETHERMES: No objection.

7 JUDGE BUSHMANN: Ameren Missouri Exhibits 6  
8 and 7 are received into the record.

9 (AMEREN EXHIBIT NOS. 6 AND 7 WERE RECEIVED  
10 INTO EVIDENCE.)

11 BY MS. TATRO:

12 Q. And in this case you're the only Staff  
13 witness on this issue again?

14 A. I am.

15 Q. Do you have -- well, let's turn to your  
16 testimony. Do you have your testimony with you?

17 A. I do.

18 Q. Page 3.

19 A. I'm on page 3.

20 Q. Okay. The first recommendation here talks  
21 about retaining the purpose language from the existing  
22 tariff?

23 A. Right.

24 Q. Do you have the old tariff and the new  
25 tariff with you?

1 A. Yes, I do.

2 Q. Pull those out, please.

3 A. Go ahead.

4 Q. Okay. Do you need a moment to review the  
5 two purpose clauses?

6 A. Yeah. I'll take a look at it, if you don't  
7 mind.

8 Q. Okay.

9 A. I read them both.

10 Q. And do you agree with me that the  
11 language -- do you agree with me the language you object  
12 to adding is the phrase "support renewable energy  
13 technologies and education through the purchase of  
14 renewable energy credits"?

15 A. Yes. I like the old language, which was  
16 exclusively to energy, renewable energy technologies,  
17 better.

18 Q. All right. You agree the program involves  
19 the purchase of RECs, correct?

20 A. It does.

21 Q. And you agree the program involves 3Degrees  
22 providing a minimum level of marketing and customer  
23 education, correct?

24 A. Yes. There has -- there has to be some,  
25 but it should not be the predominant part of the program.

1           Q.       And, in fact, the contract has a minimum  
2   level, which you point out later in your testimony,  
3   correct?

4           A.       That the contract has a minimal level?

5           Q.       The contract provides for a minimum level,  
6   I think you called it advertising.

7           A.       Yes. Yes. The \$175 that has to -- \$75,000  
8   that has to be invested.

9           Q.       Remember numbers are confidential, so let's  
10   try to talk about it without numbers if possible.

11                   Now, would you agree with me that this new  
12   purpose language is not inaccurate?

13                   MS. KLIETHERMES: I'm going to object.  
14   That's ambiguous. Inaccurate of what? It's a sentence.

15                   JUDGE BUSHMANN: I'm going to overrule  
16   that.

17                   THE WITNESS: All right. I would say to  
18   the extent that people would come on before the 4,500,  
19   approximate 4,500 -- well, again, is that confidential,  
20   the customer count?

21   BY MS. TATRO:

22           Q.       No, it's not.

23           A.       Okay. 4,500 to 5,000 came on with the  
24   expectation that they would get this going to further  
25   development of renewable energy. So by adding new

1 language midstream, are you -- how would they know, how  
2 would the new customer know that the primary purpose has  
3 been diluted to say it can be both -- I can spend it on  
4 the procurement of RECs or I can spend it on advertising,  
5 promotion. I've used the term self-perpetuation to mean  
6 both. Do you want me to continue to use -- say both  
7 advertising and administration every time?

8 Q. You can answer how you think is  
9 appropriate. I think I understand what you're saying.  
10 Now, you agree with me that in the purpose clause of the  
11 old tariff -- so you want to keep the further development  
12 of renewable energy technologies, right?

13 A. Correct.

14 Q. So if the new purpose clause said further  
15 development of renewable energy technologies and education  
16 for the purchase of renewable energy credits, then would  
17 you accept the purpose clause?

18 A. To me, it seems to open up the gate for a  
19 larger percentage to go for self-perpetuation as opposed  
20 to -- as opposed to what the primary purpose was, was the  
21 acquisition of RECs at the wholesale level, get money to  
22 the wholesale providers of RECs.

23 Q. Would you agree with me it's a better  
24 description of what happens, customers who participate  
25 purchase RECs which supports renewable energy development

1 and also supports the education and marketing of the  
2 program?

3 A. It does describe what is probably -- what  
4 should be a minor part of the transaction or the deal.

5 Q. Thank you. Page 1 of your testimony.

6 A. Page 1?

7 Q. Uh-huh. On line 22, you use the phrase  
8 cost-based rates. Do you see that phrase?

9 A. Correct.

10 Q. And do you agree with me that cost-based  
11 rates generally means ensuring the rates are based upon  
12 costs actually incurred by the utility?

13 A. Yes.

14 Q. Okay. You're part of the Staff's rates and  
15 tariffs group, is that what you told us?

16 A. Correct.

17 Q. Did you ever audit to see if Ameren  
18 Missouri paid 3Degrees the \$14 they were required to under  
19 the original contract?

20 A. No, I didn't.

21 Q. Do you know if any Staff member did?

22 A. No, I don't know.

23 Q. All right. But you agree the cost to  
24 Ameren Missouri is \$14 under the old contract?

25 A. Correct.



1 Q. And under the new contract, the cost will  
2 be \$10?

3 A. That's all -- that's all they'll turn over  
4 to Pure Power.

5 Q. That's the cost to Ameren Missouri?

6 A. Correct.

7 Q. Now, you've reviewed the contract with  
8 3Degrees, correct?

9 A. Yes, I have.

10 Q. And in your testimony you indicated you  
11 want information on 3Degrees' cost of the programs, right?

12 A. Yes.

13 Q. And in your -- in your attorney's opening  
14 statement, she indicated you wanted to know the cost, the  
15 amount that was paid to the REC generator, right?

16 A. Right. Given the -- given the language  
17 that's in the tariff, I feel that's our obligation to be  
18 sure that the moneys collected do end up substantially  
19 going for the intended purpose.

20 Q. Now, I deposed you in this case, correct?

21 A. Correct.

22 Q. And you indicated you wanted to know the  
23 salaries of the 3Degrees personnel; is that correct?

24 A. Did I ask for the salaries?

25 Q. Would it be helpful --

1           A.       Only -- only to the extent that you need to  
2     determine how much of the moneys collected go to that  
3     purpose.

4           Q.       I'm going to hand you a copy of the  
5     deposition transcript just to refresh your recollection.

6           A.       What page are we?

7           Q.       I believe 35, please. On line 7 were you  
8     asked, so you want to know the salaries of 3Degrees'  
9     personnel that were involved in the program? And on  
10    line 9 you answered correct?

11          A.       Right.

12          Q.       Going further in the deposition, did you  
13    indicate you wanted to know the cost of any advertising?

14          A.       Correct.

15          Q.       In line 14, did you indicate you want to  
16    know if they bought any furniture and what the cost of  
17    that would be?

18          A.       Correct.

19          Q.       Okay. In line 15, did you indicate you  
20    wanted the whole balance sheet and income statement that  
21    pertained to advertising activity and administration?

22          A.       What I'm talking about is from the moneys  
23    that were collected under Pure Power, how much of those  
24    moneys were spent for that type of activity.

25          Q.       And you want the whole balance sheet and

1 **income statement as it relates to those costs?**

2 A. I don't care about the overall operations.  
3 What I am asking for is an overall accounting of the  
4 moneys that were collected from Ameren customers via a  
5 tariff, via a specific tariff, and that that money was --  
6 how that money was spent.

7 I think we do have an obligation to be sure  
8 that the money goes to the intended purpose, and part of  
9 that would be -- would be to take a look at salaries that  
10 were consumed -- or moneys that were consumed in salaries,  
11 furniture and all the other incidentals so you have some  
12 idea how the customers' money that was collected was  
13 spent.

14 Q. And you also indicated on lines 19 and 20  
15 of that page that you wanted to know, of the \$14, what  
16 constituted profit or loss from the operation, correct?

17 A. Correct.

18 Q. And there you're talking about 3Degrees'  
19 profit and loss, right?

20 A. When you say 3Degrees, I'm not talking  
21 about overall operations. I'm talking about an accounting  
22 from the moneys that we collected. So -- so I'm not  
23 looking for the balance sheet or income statements of  
24 3Degrees in its entirety with all its various operations.  
25 I am simply talking about a full accounting of the moneys

1 that were collected from the -- our customers from -- from  
2 Ameren customers here in Missouri under the guise of Pure  
3 Power.

4 Q. But unlike what your counsel discussed in  
5 her opening statement, you're interested in more than just  
6 how much of the cost was paid to the generators for the  
7 RECs, correct?

8 A. Well, it's the reciprocal of the other.  
9 Yeah.

10 Q. And you want a breakdown on how that other  
11 is spent, right? You want to know how much is furniture,  
12 how much is salaries, how much is profit? Isn't that what  
13 you're asking?

14 A. Well, if you're giving -- if you're giving  
15 two general categories of administration and advertising,  
16 I don't know how you could actually categorize those  
17 expenditures unless you pick up all the expenses.

18 Q. Theoretically, you clearly would know  
19 what's spent -- if someone said this is the contract,  
20 you'd know what was spent on the REC, correct?

21 A. Correct.

22 Q. So why do you need to know of the remaining  
23 amounts how much is salaries, how much of it is furniture  
24 and how much of it is profit and loss?

25 A. If you were -- if you were to just accept

1 those categories without any review, I guess you wouldn't.  
2 The important point, you are correct in saying that it's  
3 the amount of money that goes to the REC because that's  
4 what -- what is emphasized on the website, and that is  
5 what is stated in the current tariff. That's the most  
6 important part, but it's traditional that we know where  
7 customers' money are spent.

8 **Q. It's traditional that you know how the**  
9 **utility -- what costs the utility incurs when setting**  
10 **rates, correct?**

11 **A.** In an overall rate case, that's true. This  
12 is not that, though.

13 **Q. Now, you agree that 3Degrees is not**  
14 **regulated by the Commission, correct?**

15 **A.** Correct. That's one of the problems with  
16 this setup.

17 **Q. So this Commission doesn't have the legal**  
18 **authority, in your opinion, to require that 3Degrees**  
19 **produce its balance sheet or income statement?**

20 **A.** Other than the contractual obligations that  
21 they have kind of imposed upon themselves, I would -- I  
22 would denote that. I mean, people have talked about the  
23 paragraphs on page 15. I think there's another one on 5  
24 that talks about what I interpret to be -- I'm not an  
25 attorney, I'm a layperson, but that -- that we should be

1 able to see the information in question.

2 Q. So absent the contract, it's your opinion  
3 that the Commission couldn't order 3Degrees to provide a  
4 balance sheet and income statement?

5 A. I know of no statutory authority or  
6 whatever, and the attorneys have said there is none, so I  
7 would -- they would know better than I.

8 Q. And if I asked you the same questions about  
9 salaries or furniture costs or profit and loss, your  
10 answer would be the same, right? The Commission doesn't  
11 have -- absent this contract issue for a moment, the  
12 Commission doesn't have -- 3Degrees can't be ordered by  
13 the Commission to provide that information?

14 A. They can't be, yes.

15 Q. Now, in that deposition, we discussed a  
16 situation where a utility brings in outside personnel to  
17 assist with service restoration after a major storm?

18 A. Correct.

19 Q. And you agree that Staff in a rate case  
20 would look at the reasonableness of the charges for that  
21 work, right?

22 A. Correct.

23 Q. And you agreed that Staff could determine  
24 reasonableness of that cost by looking at rates of  
25 comparable entities providing a similar service, correct?

1 A. Correct.

2 Q. We talked about coal contracts that Ameren  
3 Missouri enters into, right, and you agreed that Staff  
4 evaluates whether coal costs are prudent?

5 A. Correct.

6 Q. Staff doesn't ask for the books and records  
7 of a coal company, right?

8 A. No, we don't.

9 Q. And Staff doesn't ask for the books or  
10 records of an out-of-state utility that provides personnel  
11 to assist in storm restoration, right?

12 A. We -- if someone -- if someone were to come  
13 up -- like I say, if someone were to come up with a  
14 \$10,000 a week for one person, we might ask for a detailed  
15 accounting of why we'd pay 10 -- why you paid 10 grand and  
16 try to throw out part of that cost if that was considered  
17 excessive, deemed excessive at the time for that. So --  
18 but we don't look at the -- we don't look at the total  
19 books, I will agree with that.

20 Q. So you look at the reasonableness, you  
21 assess the reasonableness of the charge, and you do that  
22 without knowing whether that out-of-state utility is  
23 making a profit or a loss on having that --

24 A. Right.

25 Q. -- personnel in our service territory?

1           A.       That's right, but we could -- I think we  
2       could offer -- if part of the \$10,000 was they were  
3       staying in motels, there were meals, if you saw \$300 meals  
4       and \$500 hotel bills, I might challenge -- I might be of a  
5       mind to say -- to say that this was excessive based upon  
6       that specific transaction or activity.

7           **Q.       Okay. But you can judge the prudence of**  
8       **that cost without looking at the profit level of that**  
9       **utility, can't you?**

10          A.       Yeah. I don't need to look at the overall  
11       profit level of the whole operation. I just need to know  
12       what happened to what I would refer to as our money.

13          **Q.       Are you aware that Ameren Missouri offers**  
14       **energy efficiency programs?**

15          A.       Yes, somewhat.

16          **Q.       And if Ameren Missouri used contractors to**  
17       **provide those energy efficiency programs, do you believe**  
18       **that would give Staff the right to ask for the books and**  
19       **records of those contractors?**

20          A.       I don't know all that much about it. My  
21       under-- my vague understanding is that they would dispatch  
22       somebody to do like repairs on a person's home or  
23       et cetera. Again, it would be the same thing. If someone  
24       were to come back with \$10,000 for a week and it turned  
25       out to be salary, hotel rooms and et cetera, I might



1 challenge that. I might say that that's an excessive  
2 expenditure for that particular type of activity.

3 Q. Do you know if those contractors charge  
4 back expenses that way or if it's a flat contract rate?

5 A. I don't.

6 Q. Now, your rebuttal testimony indicated  
7 there were ten utilities in Missouri that had REC-related  
8 programs?

9 A. Correct.

10 Q. And that was on page 5 of your testimony?

11 A. Correct.

12 Q. And would you agree with me that Ameren  
13 Missouri's rate at \$15 is the lowest -- the second lowest  
14 cost?

15 A. Only Corn Belt Energy is -- but it's three  
16 times lower, but yes, in a ranking it would be second.

17 Q. And this chart shows it in price per  
18 kilowatt hour, right?

19 A. Correct.

20 Q. So it shows it at \$1.50. If you convert --  
21 would you agree with me that if you convert that to  
22 megawatt hours, it's \$15?

23 A. Correct.

24 Q. Do you agree with me that at \$10 Ameren  
25 Missouri's will still be the second lowest program?

1           A.       Unless something else changes with the  
2 others. These are dynamic programs. Other factors could  
3 change. So if -- given that caveat that everything else  
4 is held in place, taking away the dynamics, you are  
5 correct.

6           **Q.       Do you know if any of the other utilities'**  
7 **pricing has changed over the years?**

8           A.       No, I don't.

9           **Q.       Did you look into that?**

10          A.       No, I did not.

11          **Q.       So you're speculating when you say it could**  
12 **change?**

13                   MS. KLIETHERMES: Object. That's  
14 argumentative.

15                   MS. TATRO: What's your foundation for  
16 saying the program --

17                   JUDGE BUSHMANN: Overruled.

18 BY MS. TATRO:

19           **Q.       I'll rephrase.**

20          A.       Yeah, I've never done a study, so it would  
21 be somewhat speculative, but it's reasonable in relation  
22 to that almost all prices change given a long enough  
23 period of time.

24           **Q.       Well, some of these programs have been**  
25 **available since 2001, right? City of Springfield, City**

1     **Utilities of Springfield?**

2             A.     Right.

3             **Q.     And do you know if that price has changed?**

4             A.     No, I do not. It could have started out at  
5     a higher or a lower rate. I don't know that the 2005 has  
6     been a static price for the life of the program.

7             **Q.     And Ms. Martin testified that nationally**  
8     **these programs have prices from .5 cents to 3 cents a**  
9     **kilowatt hour, right?**

10            A.     I don't remember that, but it could -- but  
11     I'd accept it.

12            **Q.     Did you read her testimony?**

13            A.     I did.

14            **Q.     And she had a range in her testimony?**

15            A.     Can you point me to it?

16            **Q.     Do you have her testimony with you? Her**  
17     **surrebuttal, page 8, line 8.**

18            A.     Correct.

19            **Q.     And you don't have any reason to believe**  
20     **that her numbers are incorrect, do you?**

21            A.     No, I do not.

22            **Q.     So if you converted her kilowatt hour**  
23     **number to megawatt hour numbers, it would be -- the range**  
24     **would be \$5 to \$30; is that correct?**

25            A.     Correct.

1 Q. So that would appear that the cost of  
2 Ameren Missouri's Pure Power Program at \$15 was right at  
3 the midpoint?

4 A. Yes. Fairly close. I wouldn't say right  
5 at, but as an approximation, it falls within the -- within  
6 that range.

7 Q. Okay. And at \$10, it would still fall  
8 within that range, wouldn't it?

9 A. Correct.

10 Q. And, in fact, it would fall a little bit  
11 closer to the cheaper end?

12 A. Correct.

13 Q. All right. On page 10 of your rebuttal  
14 testimony and page 11, you corrected these dollar amounts  
15 that have to do with the what you call advertising  
16 expense, and those numbers are HC, so I'm not mentioning  
17 the numbers.

18 A. Okay.

19 Q. And you indicated on page 10, line 21, that  
20 you relied upon DR 351 in ER-2012-0166, which was the rate  
21 case?

22 A. Correct.

23 Q. And then DR 22 in this rate case?

24 A. Yes.

25 Q. Do you have that data request with you,

1 DR 22?

2 A. Correct. That's the number of customer  
3 counts or customer usage.

4 Q. All right. The question itself, tell me if  
5 this is correct, says provide the number of RECs retired  
6 on a monthly basis, and it's talking about the RECs under  
7 the Pure Power Program, right?

8 A. Right.

9 Q. So that doesn't have anything to do with  
10 advertising cost?

11 A. Well, again, since we don't have what I  
12 would consider traditional or real records, you have to  
13 back into it. I think I did use the word back into it.  
14 What you did provide me was averages over various DRs, I  
15 believe that other one. So I took the average times the  
16 number of RECs to get the -- for the year to get that --  
17 to get those -- the dollars.

18 Is that -- is that a flawed methodology?  
19 It's the best or as good as you can get unless you have  
20 the real data, which we tried to get and couldn't.

21 Q. So you used that in your calculations, is  
22 what you're telling me?

23 A. Yes.

24 Q. Okay. Do you have the contract with you,  
25 the 3Degrees/Ameren Missouri contract?

1           A.       New?   Old?

2           Q.       I think the language is the same in both  
3   for what I'm going to ask you about.   Now, this contract  
4   is HC.   I guess let's just go into camera, in-camera then.

5                   (REPORTER'S NOTE:   At this point, an  
6   in-camera session was held, which is contained in  
7   Volume 2, pages 153 through 158 of the transcript.)

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1 JUDGE BUSHMANN: We're back in public  
2 session.

3 BY MS. TATRO:

4 Q. Could you turn to page 9 of your testimony,  
5 please? Now, these numbers are highly confidential, but  
6 we don't have to talk about the numbers. The numbers that  
7 are in this table represent SREC vintage costs as  
8 necessary to comply with the Missouri's renewable energy  
9 standard; is that correct?

10 A. Correct.

11 Q. What is your understanding of what is  
12 required by the Missouri renewable energy standard?

13 A. Again, there's another section that deals  
14 primarily with it that -- the engineers and Dan Beck, but  
15 my understanding of the RES program is that -- that we  
16 have made a commitment to buy a certain number of RECs,  
17 for lack of another term, normal, meaning everything but  
18 solar, and I think there's a 2 percent solar commitment in  
19 there. Is that what you're getting at?

20 Q. And who is we in your sentence? You said  
21 we made a commitment to buy.

22 A. Well, I guess the State of Missouri with  
23 the passage of Proposition C. There's an obligation. Let  
24 me say a commitment probably is an inappropriate term to  
25 use in that situation. There's an obligation set forth by

1 the -- by the statute.

2 Q. And are utilities allowed to use RECs as  
3 part of their compliance strategy for the RES?

4 A. It's my understanding that they are.

5 Q. And do you know if there's geographical  
6 restrictions on where the utilities can purchase those  
7 RECs for its compliance with the RES?

8 A. Again, I'm not -- I'm not familiar with  
9 that program, but I believe there is not like there is  
10 with -- with Pure Power.

11 Q. And do you know where Ameren Missouri --  
12 where these SREC purchases -- what does SRES stand for?

13 A. Solar.

14 Q. Do you know where those were purchased  
15 from?

16 A. Based upon our conversation during being  
17 deposed, I believe most of them came from out of state.

18 Q. Did you know that when you wrote your  
19 testimony?

20 A. No, I did not.

21 Q. Did you investigate that issue?

22 A. No, I did not. The purpose of that is just  
23 to compare the price of RECs.

24 Q. But you don't know if they're comparable if  
25 you don't know the guidelines that govern them, now, do



1     **you, sir?**

2             A.       There can be a lot of factors that impact  
3     price.

4             Q.       Do you know if Ameren Missouri has solar  
5     generation within the state?

6             A.       I'm not certain whether you have -- are you  
7     talking about your ability to generate? I don't  
8     believe -- I don't believe you do, but I'm not certain of  
9     that.

10            Q.       Okay. Do you think there's a lot of solar  
11     generation occurring in the state of Missouri?

12            A.       Probably not. It's not the most sunny  
13     place in the world.

14            Q.       Do you know whether there's wind farms in  
15     the state of Missouri?

16            A.       Yes.

17            Q.       Do you know if California has solar  
18     generation facilities?

19            A.       My understanding is that they do.

20            Q.       Is it your understanding they have more or  
21     less solar generation than the state of Missouri has?

22            A.       They probably have more. If we have none  
23     and they have considerable, yes, they have more.

24            Q.       And did you review Mr. Barbieri's  
25     surrebuttal testimony on this topic?

1           A.       I have read -- I've read -- I've read his  
2   surrebuttal.

3           Q.       Do you have it there with you?

4           A.       Give me a second to flip through some  
5   pages. I've got his direct testimony. Surrebuttal  
6   testimony of William J. Barbieri.

7           Q.       Can you turn to page 9?

8           A.       I'm there.

9           Q.       You're faster than I am. Hang on just a  
10   second. Starting on line 15, Mr. Barbieri explains that  
11   the RES compliance RECs purchased come from an area where  
12   there's an oversupply of RECs. Do you see that?

13          A.       Correct.

14          Q.       Do you have any reason to disagree with  
15   that statement?

16          A.       No, I don't.

17          Q.       And he continues on to say, consequently  
18   the prices are lower and declining. Do you see that  
19   statement?

20          A.       Correct.

21          Q.       Do you have any reason to disagree with  
22   that statement?

23          A.       I don't know if it's true.

24          Q.       Okay. Do you agree that generally  
25   oversupply of an item can lead to decreasing the cost of

1     **that item or what a person could charge for that item?**

2             A.       If all other things stayed static, that's  
3     probably what's going to happen, but I don't know that  
4     that's the case here specifically.

5             Q.       **Okay. Can you turn to page 14 of your**  
6     **rebuttal?**

7                     MS. TATRO: Can I ask a question. Do you  
8     want me to just finish up? I'm probably two-thirds of the  
9     way done.

10                    JUDGE BUSHMANN: Yes, let's keep going.

11     BY MS. TATRO:

12             Q.       **Your rebuttal, page 14.**

13             A.       I'm there.

14             Q.       **On this page you mention a North Carolina**  
15     **green power program and a Georgia power program?**

16             A.       Correct.

17             Q.       **And you indicate those are REC programs**  
18     **similar to Ameren Missouri's?**

19             A.       Correct. They are green energy programs.

20             Q.       **Prior to filing your testimony, did you**  
21     **review the North Carolina green power tariff?**

22             A.       No, I did not.

23             Q.       **And prior to filing this testimony, did you**  
24     **review the Georgia power program tariff?**

25             A.       No, I did not.

1           Q.       Okay. Do you know if the utilities  
2 administer the programs themselves or if they hire a third  
3 party to do so?

4           A.       I don't.

5           Q.       You didn't inquire to that?

6           A.       The basic questions I asked, I think I've  
7 sent you my DRs that were sent out, and I think in  
8 conversations I followed up. What I was basically looking  
9 for is, are there some plans, REC plans that can operate  
10 with as little as 15 percent caps on administration and  
11 marketing or a 25 percent hard cap, meaning I don't know  
12 what the percentage is -- I don't know what the actual  
13 number is, but it's not supposed to exceed 25 percent.  
14 Sort of like what I'm proposing here at 40.

15          Q.       But if the Commission is to make a  
16 determination of whether or not a similar cap is  
17 appropriate in this case, wouldn't it be helpful  
18 information to know whether or not it's even the same  
19 program Ameren Missouri offers or a similar program to  
20 what Ameren Missouri offers?

21          A.       It's a voluntary green program.

22          Q.       You didn't read the tariff, right? Do you  
23 know what they charge?

24          A.       We went through that on --

25          Q.       I'm asking you what you knew when you filed

1 the testimony.

2 A. No, I did not know what -- I did not know  
3 the specifics of the charge.

4 Q. Do you know in energy was associated with  
5 the REC purchase?

6 A. Not back then.

7 Q. Do you now?

8 A. I believe there is energy associated with  
9 it.

10 Q. So if I were to ask you what the 25 percent  
11 number for the cap for the North Carolina program, what  
12 dollar amount that generates, do you know that  
13 information?

14 A. Not off the top of my head, no.

15 Q. Did you know it when you wrote your  
16 testimony?

17 A. No.

18 Q. And for Georgia Power, if I asked you what  
19 11.7 percent generated, would you be able to tell me?

20 A. No.

21 Q. And you didn't know it when you filed your  
22 testimony?

23 A. I did not.

24 Q. Would you agree with me that 25 percent of  
25 a more expensive program produces a larger dollar number

1     **than 25 percent of a less expensive program?**

2             A.       Not in all cases. If you have a -- if the  
3     base is big enough that the -- the one that's collecting  
4     at a nickel a REC could outshine one that's collecting at  
5     a dollar a REC if the base was 20 times smaller, more than  
6     20 times smaller.

7             Q.       On --

8             A.       So there are more factors than just the  
9     price of the unit that's going in. I mean, as I said --

10            Q.       Let's do it this way: On a per-REC basis,  
11     would you agree with me that 25 percent of a more  
12     expensive program produces a larger dollar number than  
13     25 percent of a less expensive program?

14            A.       Correct.

15            Q.       Page 8 of your rebuttal contains a table,  
16     and those numbers are highly confidential.

17            A.       Of my testimony?

18            Q.       Your testimony. And would you agree with  
19     me that between 2008 and 2009, without using the numbers,  
20     the amount paid per REC increased substantially?

21            A.       That's what was reported, yes.

22            Q.       Okay. And would you agree that, as  
23     reported, those numbers continued to increase between 2009  
24     and 2011, albeit at a slower rate?

25            A.       True.

1 MS. TATRO: I do need to go in-camera for  
2 this question, please.

3 (REPORTER'S NOTE: At this point, an  
4 in-camera session was held, which is contained in  
5 Volume 2, pages 168 through 169 of the transcript.)

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1 BY MS. TATRO:

2 Q. Page 13 of your rebuttal, starting about  
3 line 13, you indicate that the tariff nor the website  
4 tells customers that part of the money's going to go for  
5 overhead. Do you see that?

6 A. Correct.

7 Q. And you also reference Schedule MJE-2 and  
8 MJE-3; is that correct?

9 A. Correct.

10 Q. This is based upon your opinion?

11 A. I saw nothing there that indicates that  
12 money -- that a portion of what you give will go for  
13 overhead --

14 Q. So the word overhead --

15 A. -- or self-perpetuation.

16 Q. Okay. So the word overhead doesn't appear  
17 in that language, is that what you're saying?

18 A. Well, it doesn't tell you that close to  
19 half of it -- I don't know if it's there or not. I know  
20 there's nothing --

21 Q. Mr. Ensrud, numbers are highly  
22 confidential, please.

23 A. Okay.

24 Q. I think this is about the third time. So  
25 please be very careful. We're not in-camera.



1           A.       Well, it's hard to answer your questions if  
2   we're in-camera. It's the amount -- it's the amount that  
3   is concerning. There may be something that tells you that  
4   there is overhead in there, but I don't see anything that  
5   says a substantial portion, and it's certainly not a  
6   prevalent part of the -- of either the website nor -- nor  
7   the tariff.

8           Q.       Can you turn to your Schedule MJE-2,  
9   please?

10          A.       I'm there.

11          Q.       Okay. Look at example 2, which is at the  
12   bottom of the first page 1 of 3 of that exhibit.

13          A.       Example 2? Okay.

14          Q.       And that question asks how the program  
15   works, correct?

16          A.       Right.

17          Q.       And the answer talks about Ameren Missouri  
18   monitoring usage, do you see that, customer usage?

19          A.       Yes. Ameren manages their monthly energy  
20   usage and buys equivalent REC amount of local green power  
21   certified. Correct.

22          Q.       And then says that they're retired on  
23   behalf of customers, correct?

24          A.       Correct.

25          Q.       And doesn't that indicate there's some kind

1 of action that has to occur in order for the usage to be  
2 monitored, for the RECs to be purchased and for the RECs  
3 to be retired?

4 A. Correct.

5 Q. And there would be a person performing that  
6 work, correct?

7 A. There should be, yes.

8 Q. Okay. And that person's wages or salaries  
9 would be an overhead cost?

10 A. That's a reasonable assumption.

11 Q. And the person who designs the marketing  
12 materials -- there's a person who designs marketing  
13 materials, correct?

14 A. Correct.

15 Q. And there's a cost for that person or  
16 persons, correct?

17 A. Correct.

18 Q. And that would be an overhead cost?

19 A. Correct.

20 Q. And Schedule MJE-2, Exhibit 3 --

21 A. MGE-2, Exhibit --

22 Q. MJE-3.

23 A. Example 3?

24 Q. No. Yes. The next page.

25 A. Right.

1           Q.       That answer contains much of the same  
2   information, Ameren Missouri will monitor your monthly  
3   usage, buy an equivalent amount of Green-e certified  
4   renewable energy credits and retire them on your behalf,  
5   right?

6           A.       It does.

7           Q.       Now, would you agree with me that MJE-2  
8   doesn't contain the entire website page?

9           A.       No. It's just a -- it's a snippet.

10          Q.       These are just excerpts. Okay. On page 12  
11   of your testimony, you talk about the Florida Power &  
12   Light program?

13          A.       On page 12 of my testimony, correct. Let  
14   me get there first.

15          Q.       Sure. Are you there?

16          A.       I'm there.

17          Q.       Do you know whether this program was  
18   Green-e certified?

19          A.       I don't -- I don't know if it was or was  
20   not.

21          Q.       Okay. Was this solely a REC program?

22          A.       No, it was not.

23          Q.       Did it require Florida Power & Light to  
24   build solar generation facilities?

25          A.       It did.

1           **Q.       And did Florida Power & Light build those**  
2 **generation facilities?**

3           A.       They fell behind, is what my recollection  
4 is, that they -- they did build some or do some, but they  
5 didn't -- they didn't do it all.

6           **Q.       And does the Pure Power Program contain any**  
7 **require that Ameren Missouri construct solar generation**  
8 **facilities?**

9           A.       No, it does not.

10          **Q.       Did the Florida Sunshine Program require a**  
11 **certain number of customers be enrolled in the program?**

12          A.       There were approximately 40,000 when it met  
13 its demise. There was something about, yeah, you had to  
14 enroll -- there was something in there about that you had  
15 to enroll a certain number of customers each year.

16          **Q.       And do you know if Florida Power & Light**  
17 **was able to enroll that number of customers?**

18          A.       I think they fell behind at a certain  
19 point.

20          **Q.       And does Ameren Missouri's Pure Power**  
21 **Program contain any requirement that a certain number of**  
22 **customers be enrolled?**

23          A.       No, it does not, although it does make  
24 projections that it grows, I think, in its contract. But  
25 I don't think -- I don't remember or read that there's

1 horrendous penalties or whatever if they fail to meet the  
2 growth criteria.

3 Q. So the Florida Power & Light, the Sunshine  
4 Program had a multitude of problems; do you agree?

5 A. A multitude of problems? Yes.

6 Q. Okay. Now, on line 6 of page 12 you say  
7 the program was terminating -- was terminated because it  
8 was misleading and the overhead was too high. Do you see  
9 that sentence?

10 A. It was on page 7. 7 and 8, right, not 6?

11 Q. I'm looking at page 12.

12 A. On page 12 --

13 Q. Line 7.

14 A. Right, and 8.

15 Q. Right.

16 A. Correct.

17 Q. Now, you attached the Florida PSC order  
18 terminating the program as Schedule 6 to your rebuttal,  
19 correct?

20 A. I -- I did.

21 Q. Okay. And you included the concurrences?

22 A. And the two concurrences, correct.

23 Q. All right. Looking at that order, page 1  
24 through page 9 are the actual order terminating the  
25 program; is that correct?

1           A.       Give me a second to get there, if you  
2 would, please.

3           Q.       **Certainly.**

4           A.       I'm there.

5           Q.       **So pages 1 --**

6           A.       Page 1?

7           Q.       **Of the schedule, pages 1 through actually I**  
8 **guess --**

9           A.       16.

10          Q.       **Right. But pages 1 through the very top of**  
11 **10 are the order itself which terminated the program,**  
12 **correct?**

13          A.       1 through 10 with the Ann Cole signature,  
14 correct.

15          Q.       **And then midway down on page 10 starts the**  
16 **first concurrence?**

17          A.       Yes.

18          Q.       **And what is your understanding of what a**  
19 **concurrence is?**

20          A.       It's the opinion above and beyond what is  
21 contained in the order by a specific commissioner or  
22 commissioners. It can be something that says we agree or  
23 we disagree with what the body of this says or I want to  
24 go further than what the body of this says in some aspect  
25 or manner.

1           Q.       And this first concurrence is signed by one  
2 commissioner, right?

3           A.       Correct.

4           Q.       And the second concurrence is on page 11?

5           A.       Yeah.

6           Q.       And it is signed by one commissioner?

7           A.       Correct.

8           Q.       So the two concurrences do not represent  
9 the conclusion of the entire commission?

10          A.       It did not.

11          Q.       Now, looking at the order itself, which is  
12 pages 1 through the top of page 10, can you point to the  
13 language that said the level of the overhead expenditures  
14 is the main reason the program was terminated?

15          A.       There isn't a clause that says exclusion of  
16 all others, but there are a number of clauses which  
17 express concern about -- about the audit and the results  
18 of the audit, which are consistent, but I would concur  
19 that it is not the sole only.

20          Q.       Starting on page 3 of that exhibit, that  
21 schedule, Schedule 6.

22          A.       I'm on page 3.

23          Q.       You see midway down it says, review of  
24 Sunshine Energy Program? You see that heading?

25          A.       Page 2, review of Sunshine schedule --

1 correct.

2 Q. And it says, the following describes the  
3 Sunshine Energy Program, the results of our staff's audit  
4 and staff's concern regarding implementation of the  
5 program. Is that accurate?

6 A. Correct.

7 Q. So it's reciting what staff found in its  
8 audit, correct?

9 A. Correct.

10 Q. It does not say whether the commission  
11 concurs or disagrees with staff's audit, that sentence,  
12 correct?

13 A. I guess specifically the answer to that is  
14 no, it does not say that they concur.

15 Q. Okay.

16 A. Although they did terminate the program.

17 Q. Fair enough. Then the next underlined  
18 portion says, FPL's existing Sunshine Energy Program. So  
19 that's the description of the Sunshine Energy Program it  
20 talks about in that first sentence, correct?

21 A. Where did you go from there?

22 Q. Right below the sentence I just read to you  
23 on page 3.

24 A. Okay. On page 3, the --

25 Q. FPL's Sunshine -- I'm sorry -- existing



1     **Sunshine Energy Program. Do you see that?**

2             A.     Existing -- right.

3             Q.     And would that be the description of the  
4     **Sunshine Energy Program that's talked about in the**  
5     **sentence above?**

6             A.     Right. It's describing what Green Mountain  
7     is responsible for.

8             Q.     And on page 4 of that same schedule,  
9     **there's a heading in italics that says program**  
10    **participation revenues and expenses. Do you see that?**

11            A.     On page 4, program participation revenue  
12    and expenses.

13            Q.     And then down below, TREC purchases?

14            A.     Correct.

15            Q.     So again, this is part of the description  
16    **of the program; is that correct?**

17            A.     It is.

18            Q.     Okay. On page 5 it says solar capacity  
19    **commitments, again italicized?**

20            A.     Right.

21            Q.     And again, that's part of the description  
22    **of the program, correct?**

23            A.     Correct.

24            Q.     Okay. Please turn to page 6 of the order.  
25    **You see underlined it says audit results?**

1 A. Correct.

2 Q. And that would be the portion, going back  
3 to page 3 and that sentence, the results of our staff's  
4 audit?

5 A. Correct. I believe, I mean, that would be  
6 a reasonable interpretation.

7 Q. Okay. That section goes over to the bottom  
8 of line 7. Would you read that to yourself and tell me if  
9 there's any language where the Commission rules on the  
10 validity of the audit finding.

11 A. There is a line that says, in addition,  
12 there appears to be excess revenues that could have been  
13 used to provide greater benefit to the program  
14 participants --

15 Q. Can you tell me where that is? Is that in  
16 the first paragraph?

17 A. That's in the audit results, yes.

18 Q. And that paragraph says, our staff began by  
19 requesting, right?

20 A. Correct.

21 Q. Is it your position that's the commission  
22 finding or the commission recitation of staff's audit?

23 A. I believe it to be the commission's  
24 conclusion, is the way I read it.

25 Q. Then on page 7, right underneath the chart,

1     **it says, Florida Power & Light filed a response to the**  
2     **staff audit. Do you see that?**

3             A.     Right. On June 16th.

4             Q.     **Yes.**

5             A.     Right.

6             Q.     **Is there anything in this paragraph that**  
7     **says the commission didn't believe Florida Power & Light's**  
8     **explanation?**

9             A.     No.

10            Q.     **And that's because this is just a**  
11    **recitation of what had been alleged in the case, correct?**

12            A.     When it says there, in addition, there  
13    appears to be excess revenue that could have been used,  
14    I'm not so sure if that isn't the commission's opinion as  
15    part of the audit results. I don't know if that's an  
16    unreasonable reading or not, but from a layperson's  
17    reading, it would be -- it would be -- it's -- to me, it  
18    seems to be what the Commission was thinking.

19            Q.     **But you agree it appears in the paragraph**  
20    **that's titled audit results?**

21            A.     It does.

22            Q.     **Okay. Then over on page 7 it says,**  
23    **concerns regarding FPL's implementation of existing**  
24    **programs. Do you see that heading?**

25            A.     Right.

1 Q. And that would be consistent with the last  
2 part of that first sentence on page 3 that says they're  
3 setting forth staff's concerns regarding implementation of  
4 the program, right?

5 A. Restate the question.

6 Q. Okay. Back on page 3.

7 A. All right.

8 Q. The sentence under review of Sunshine  
9 Energy Program says the Commission's going to -- the  
10 following section does three things: Describes the  
11 Sunshine Energy Program; second, has the results of our  
12 staff's audit; and third of all, has Staff's concerns  
13 regarding implementation of the program. Do you see that  
14 sentence?

15 A. Yes.

16 Q. So staff's concerns regarding  
17 implementation of the program would you agree with me are  
18 reflected on page 7, concerns regarding Florida Power &  
19 Light's implementation of existing program?

20 A. That is, but I still -- it could be read  
21 that the in addition line is a concurrence.

22 Q. I'm not talking about that section anymore.  
23 I'm talking about a new section.

24 A. All right. Go back to -- okay.

25 Q. I'm just trying -- I'm just trying to make

1     **sure. The commission order says that section's going to**  
2     **contain three things. This is the third thing that it's**  
3     **going to contain.**

4             A.     All right.

5             Q.     **Does that make sense?**

6             A.     Yes.

7             Q.     **You agree with that?**

8             A.     With the caveat that I don't know if  
9     they've thrown in a line in the body there saying that  
10    they find fault with it, but --

11            Q.     **Okay.**

12            A.     I'm not -- I would say that I am -- I would  
13    not come to the exact same conclusion with the sincerity  
14    that you do. The more you point that out, there may be  
15    some merit to it, but it's still not the clearest language  
16    in the world as to how much they found fault with and how  
17    much they didn't.

18            Q.     **Would you read this section under concerns**  
19    **regarding FPL's implementation of the existing program.**  
20    **Does it talk about the concern for overhead -- of the**  
21    **percentage of overhead costs?**

22            A.     Closing line, in light of these shifts in  
23    policy as well as the questions raised by administrative,  
24    marketing and other costs, we believe that other better  
25    options are available to promote renewable energy such as

1 the Sunshine as no longer the best means by the state --  
2 state's renewable energy policy can be achieved. To me  
3 that means that they found that this isn't a real good way  
4 to distribute the costs that are collected, and they do  
5 have a concern about the self-perpetuation of the -- of  
6 the plan, I mean. So I would take that to say there is  
7 concern about how the money was spent, which was one of my  
8 concerns.

9 Q. Would you agree with me it's one of many,  
10 many things that are listed in this paragraph?

11 A. That's a correct characterization.

12 Q. And, in fact, it talks about shifts in  
13 policy, and that dealt with several new laws that had come  
14 into effect, right?

15 A. Yes.

16 Q. That sentence doesn't say the overhead  
17 costs or administrative costs are the most significant  
18 reason that they terminated the program, does it?

19 A. Going back to grammar 101, usually the most  
20 significant sentence is either the first or the last, and  
21 the last sentence here --

22 Q. Last --

23 A. -- is about that.

24 Q. It includes that in a laundry list of  
25 issues, right?

1 A. Which are addressed above, yes.

2 Q. Then we have the conclusion paragraph. Do  
3 you see that?

4 A. I do.

5 Q. Does that paragraph talk about -- does that  
6 paragraph say the commission is canceling the program  
7 because of the administrative, marketing or other overhead  
8 costs?

9 CHAIRMAN KENNEY: Where are you now?

10 MS. TATRO: Page 8.

11 CHAIRMAN KENNEY: 8 of 16, the conclusion?

12 MS. TATRO: Yes, the conclusion section.

13 MS. KLIETHERMES: I'm sorry. Are we on the  
14 paragraph that begins "as discussed above"?

15 MS. TATRO: I'm dealing with the two  
16 paragraphs under the heading conclusion.

17 MS. KLIETHERMES: Okay. Thank you. My  
18 apologies.

19 THE WITNESS: There is not a thou shalt and  
20 thou shalt not, but there is a sentence that says, with  
21 respect to the money spent on the Sunshine Energy Program,  
22 we direct staff to continue with the -- with the audit of  
23 Green Mountain's books pertaining to the program with the  
24 understanding that information will be available to the  
25 commission.

1                   So there is a -- there is a -- even in the  
2 conclusion they do express an interest in the books and  
3 what happened to the money, which is basically what I'm  
4 saying. The money that was collected under the program, I  
5 think that's a reasonable reading of that sentence, but is  
6 it --

7 BY MS. TATRO:

8                   Q.       But your -- sorry.

9                   A.       Go ahead.

10                  Q.       Your testimony is that the overhead  
11 percentages are the reason that the commission, the  
12 Florida commission canceled the program. Would you not  
13 agree with me this sentence indicates the commission was  
14 continuing that investigation and they hadn't yet reached  
15 a conclusion?

16                  A.       That might be a reasonable conclusion but  
17 for the fact that they terminated the plan.

18                  Q.       And in the paragraph above they indicated  
19 there were lots of reasons why they could terminate the  
20 program in light of the shifts in policy, right? That's  
21 what it says in the sentence above?

22                  A.       (Witness nodded.)

23                  Q.       Now, on page 9, there's the tariff  
24 cancellation section and a bunch of ordered paragraphs,  
25 and you'd agree with me that these terminate the program



1     **but these don't go into the reasons why the program was**  
2     **terminated, right?**

3             A.       I don't believe so. I've read it.

4             MS. TATRO: I have no further questions.

5     Thank you, sir.

6             THE WITNESS: Thank you.

7             JUDGE BUSHMANN: Any questions from the  
8     Bench, Mr. Chairman?

9             CHAIRMAN KENNEY: No, thank you.

10            JUDGE BUSHMANN: Commissioner Kenney?

11            COMMISSIONER W. KENNEY: Yes. Thank you.

12     QUESTIONS BY COMMISSIONER W. KENNEY:

13            Q.       **Hello, sir.**

14            A.       How are you?

15            Q.       **I just have two questions. Do you know if**  
16     **any other commissions that you've researched that as a**  
17     **condition of a voluntary program like this that the**  
18     **commission has required the utility company to**  
19     **contractually obligate a third party to give cost**  
20     **breakdowns?**

21            A.       I would say that the rejection from  
22     Illinois was based upon there's a huge amount of language  
23     in there about accounting not being sufficient for that,  
24     and I would -- you know, when you read the original  
25     contract, that -- it was viewed that it could be its

1 service under both contracts, Missouri and Illinois. So  
2 while I see there's some difference, I would say that if  
3 they could be served under the same contract, there are a  
4 lot of similarities. So that one, it was rejected because  
5 there was no -- the cost support was insufficient.

6 Now, again, it's one of these things where  
7 there's probably more than one reason. Is it the one,  
8 sole, total, only reason? I'm not saying that. But given  
9 the weight and the language that I read into that one, I  
10 would say that it was -- that it was rejected like that.

11 When you get into like the North Carolina  
12 program, since they have the hard cap, that infers that  
13 they -- that they have ability to study the records of the  
14 one step out, the party -- the party who's actually doing  
15 it. Let's see. Who else? I know that there is some type  
16 of accounting requirement, and I know there's variance of  
17 the plans, but Florida had -- was -- to me still seems to  
18 be the reason they threw it out. Illinois rejected it.  
19 Georgia looks at costs. North Carolina looks at costs.  
20 Indiana, they have orders that are issued in relation to  
21 it.

22 Q. Okay. You're --

23 A. Missouri -- not Missouri, but --

24 Q. You're talking about the costs, and I  
25 understand that.

1           A.       Right.

2           Q.       But have they -- any commission that's  
3 contractually obligated that the utility company must as a  
4 condition of a contract that they make sure that that  
5 third-party vendor supplies breakdowns? I know you said  
6 Illinois rejected the program.

7           A.       Right. And part of the program was  
8 because -- one of the rejections was because they weren't  
9 getting what they felt was sufficient cost information to  
10 assure what happened to the money. And I guess what I'm  
11 saying in very basic terms is, most of the states that  
12 I -- in fact, that's why I was calling, saying do you have  
13 a requirement in all these other states that in some form,  
14 and I admit I wasn't -- I wasn't getting it real specific,  
15 but I don't think you really need to if you're looking at  
16 do you or do you not look beyond what -- what Ameren pays  
17 to the 3Degrees.

18                   I would say that the majority of those  
19 states do have it or, like I say, there's two -- one of  
20 them that's been tossed, it was in and then tossed. The  
21 other one that it was not accepted simply -- or mainly --  
22 well, because, because of that.

23           Q.       We're talking about two different things.

24           A.       Okay.

25           Q.       You're talking about the why you feel they

1     were rejected and why they said they were rejected.   Okay.  
2     I'll just ask it this way.   Do you think this Commission  
3     has the authority to tell Ameren they have to  
4     contractually obligate 3Degrees to provide a cost  
5     breakdown?

6             A.       The answer --

7             Q.       It's a simple yes or no.

8             A.       The answer is yes.   I think there's another  
9     clause in their contract that pertains somewhat to that.

10            Q.       So you think the Commission should order  
11    our utility companies to contractually get breakdowns on  
12    all their vendors for -- on third-party issues, on  
13    third-party deals?   Do you understand what I'm saying?  
14    Ameren says they're not going to -- they don't want to ask  
15    it.   3D provided it.   The question asked, was 3D, was it  
16    just their overall financial scope?   I just Googled and  
17    they've got offices in Oregon --

18            A.       Right.   I've never --

19            Q.       -- versus St. Louis.

20            A.       I've never --

21            Q.       So we don't know if they're 78 percent or  
22    if their breakdown is Missouri only or if it's just for  
23    their company as a whole.   That's something we can  
24    probably find out.   But my question is, should this  
25    Commission order a group like Ameren to put that in their

1     **contracts? Do we have the authority to do it?**

2             A.       No, I don't think you -- I don't think you  
3     do.

4                     COMMISSIONER W. KENNEY: All right. Thank  
5     you.

6                     JUDGE BUSHMANN: Recross based on questions  
7     from the Bench, Public Counsel?

8     RE CROSS-EXAMINATION BY MR. MILLS:

9             **Q.       I guess to follow up on Commissioner**  
10    **Kenney's question, if your answer was that this Commission**  
11    **can't either through Ameren or through some other means**  
12    **get the information from 3Degrees as to what the costs of**  
13    **the actual -- the actual payments to the producers were,**  
14    **would your recommendation be that in the absence of a way**  
15    **to get that information, that the tariff should simply be**  
16    **rejected and the program be stopped?**

17             A.       That's exactly the point, that if you --  
18     and that's the primary point, that there's enough of a  
19     conflict between what this is in traditional regulation  
20     that this doesn't belong in the tariff, and that the  
21     primary thing is it should be rejected.

22                     MR. MILLS: That's all I have. Thank you.

23                     JUDGE BUSHMANN: Ameren?

24     RE CROSS-EXAMINATION BY MS. TATRO:

25             **Q.       Just one point of clarification,**

1 Mr. Ensrud. You mentioned North Carolina and their hard  
2 cap in response to Commissioner Kenney's question about  
3 did you know of any other program where the commission  
4 requires the utility to obligate third parties to provide  
5 cost information, right? You recall that conversation?

6 A. Correct.

7 Q. But isn't it also true you don't know  
8 whether the North Carolina program is administered by the  
9 utility or not?

10 A. Correct.

11 Q. And if it's administered by the utility,  
12 then clearly the Commission has the ability to look at  
13 various costs?

14 A. Correct.

15 MS. TATRO: Thank you.

16 JUDGE BUSHMANN: Redirect?

17 MS. KLIETHERMES: Yes, briefly.

18 REDIRECT EXAMINATION BY MS. KLIETHERMES:

19 Q. Mr. Ensrud, let's start with Schedule 6 to  
20 your rebuttal testimony, and I'll see if we can get  
21 through this in less than 50 minutes. Could you turn to  
22 page 8 of that document?

23 A. All right.

24 Q. I think counsel had you read more or less  
25 every line of this document into the record or review it

1 at some point, but I'm going to direct you to the first  
2 sentence under the word conclusion and ask you to read  
3 that aloud.

4 A. As directed above, the Sunshine Program  
5 does not currently serve the interests of the program's  
6 participants and does not align the current states  
7 renewable energy policies.

8 Q. And I think you may have misspoke. What  
9 was the second word in that sentence?

10 A. Does not align with the --

11 Q. I'm sorry. The second word of the very  
12 first sentence there.

13 A. As discussed above.

14 Q. Thank you. And what was discussed above?

15 A. The -- the various points that -- that are  
16 listed in the headings, including the auditing point.

17 Q. Thank you. You were asked about  
18 administrative costs and any conclusions the Commission  
19 reached on those in the 0318 case. Do you recall that?

20 A. I do.

21 Q. How many people did Ameren fly from  
22 San Francisco in that case?

23 A. I don't remember any.

24 Q. Ms. Tatro directed you to some sections in  
25 your deposition around page 35 discussing salaries and

1 other items. Do you recall that discussion?

2 A. I do.

3 Q. Did you bring up salaries or did Ms. Tatro?

4 A. She did.

5 Q. And were there -- was there other  
6 discussion and other explanation that you provided in that  
7 area of your deposition?

8 A. Yeah, there were other comments.

9 Q. You were asked about utility -- I'm sorry.  
10 You were asked about other utilities providing green power  
11 programs in Missouri. Are any of those other utilities,  
12 are their -- is this Commission charged to determine the  
13 justness and reasonableness of their rates?

14 A. The other nine, no.

15 Q. You were asked about the range of prices of  
16 other green programs. Has Martin or has Ameren in any  
17 other -- through any other witness provided information  
18 regarding the range of costs of those other programs?

19 A. No.

20 Q. Do you know what costs are included in each  
21 of the categories of averages received from Ameren?

22 A. No. It's a -- it's a mystery figure.

23 Q. And you were asked when REC sourcing. Do  
24 either the old or the new VGP tariff including a sourcing  
25 requirement?



1           A.       Yeah. I believe there was, that they --  
2       that they have to be from Missouri or a certain percentage  
3       of them anyway.

4           Q.       I'm getting these documents all confused.  
5       Is that in the tariff or is that in the contract?

6           A.       I think it's in -- hopefully it's in the  
7       tariff because that's a lot easier to research.

8           Q.       Why don't you take a look at the tariff and  
9       let us know if there are any sourcing requirements  
10      whatsoever in that document? I see you're done looking at  
11      the tariff. Was it in the tariff?

12          A.       No.

13          Q.       That's all we need to know is that there's  
14      nothing in the tariff regarding sourcing requirements.

15                   And if you could turn to page 8 of your  
16      rebuttal testimony. I believe you've got a table there,  
17      and Ms. Tatro asked you about pricing and trends. Do you  
18      recall that discussion?

19          A.       Correct.

20          Q.       Do you know the price for 2012?

21          A.       No. That has not been relayed to me as --  
22      as were the others.

23          Q.       And has Ameren provided Staff with  
24      information on that trend that she discussed as it  
25      pertains to 2012?

1 A. No.

2 Q. And just real quickly turning back to that  
3 Florida order, back on Schedule 6, I think Ms. Tatro  
4 somewhat belabored the point, if you will, that the  
5 Florida legislature also intervened. Do you recall that  
6 discussion?

7 A. I believe -- yes, I believe so.

8 Q. Have there been any policy changes in  
9 Missouri since the VGP program first took place?

10 A. Yeah, Proposition C.

11 Q. Is that a significant policy change?

12 A. It would -- yes.

13 MS. KLIETHERMES: That's all I have. Thank  
14 you, Mr. Ensrud.

15 THE WITNESS: Thank you.

16 JUDGE BUSHMANN: That concludes all the  
17 testimony. Mr. Ensrud, thank you, sir.

18 THE WITNESS: Thank you.

19 JUDGE BUSHMANN: That's also all the  
20 evidence that we put on today, unless there's anything  
21 else that I'm not aware of.

22 MS. TATRO: No, sir.

23 JUDGE BUSHMANN: Do the parties have any  
24 final matters that need to be brought up on the record?

25 MS. KLIETHERMES: Judge, I'm not sure

1 whether we've ever -- with the delay in the hearing, I'm  
2 not sure we ever change the briefing schedule.

3 JUDGE BUSHMANN: My understanding based on  
4 what I'm looking at as far as the amended procedural  
5 schedule shows transcripts were supposed to be available  
6 tomorrow, but I think that must be a typo. Would the 22nd  
7 or the 25th work for the parties for an expedited  
8 transcript?

9 MS. TATRO: How long is that from now?

10 JUDGE BUSHMANN: Friday would be the 22nd.  
11 Monday would be the 25th. Would Monday the 25th work for  
12 everyone? I show that the Proposed Findings of Fact and  
13 Conclusions of Law are due on April the 8th, and then  
14 there's optional reply briefs due April the 15th.

15 MS. KLIETHERMES: Actually, from Staff's  
16 perspective, I think we can make that schedule work even  
17 with the shift in the hearing. I neglected to look how  
18 far out it is.

19 JUDGE BUSHMANN: That was the amended dates  
20 that show up in the amended procedural schedule. Why  
21 don't we have the transcripts available on March 25th,  
22 that's next Monday, and then the Proposed Findings of Fact  
23 and Conclusions of Law due April 8th, and then optional  
24 reply briefs due April 15th.

25 MS. KLIETHERMES: Thank you, Judge.

1 JUDGE BUSHMANN: Anything further?

2 MS. TATRO: No.

3 JUDGE BUSHMANN: Hearing nothing, this  
4 hearing is now adjourned.

5 (WHEREUPON, the hearing concluded at  
6 1:03 p.m.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI )

3 ) ss.

4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, do hereby certify that I was personally present  
8 at the proceedings had in the above-entitled cause at the  
9 time and place set forth in the caption sheet thereof;  
10 that I then and there took down in Stenotype the  
11 proceedings had; and that the foregoing is a full, true  
12 and correct transcript of such Stenotype notes so made at  
13 such time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.

16

17 \_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR

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