

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Hearing

February 10, 2012

Jefferson City, Missouri

Volume 4

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

MORRIS L. WOODRUFF, Presiding
 CHIEF REGULATORY LAW JUDGE

KEVIN D. GUNN, Chairman

TERRY M. JARRETT

KEVIN GUNN

ROBERT S. KENNEY,

STEPHEN M. STOLL,

COMMISSIONERS

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1 PROCEEDINGS

2 JUDGE WOODRUFF: All right. It looks like
3 it's 9:00 o'clock so we will go ahead and get started with
4 day two of the hearing in EO-2011-0128.

5 We have one witness today, Maureen Borkowski,
6 for Ameren. She's on the stand. Commissioner Kenney is with
7 us from St. Louis and Commissioner -- or Chairman Gunn is on
8 the telephone. Commissioner Kenney has requested that -- he
9 has to be on his way by 9:30 to go to a memorial service, I
10 believe, so he would like to go out of order to ask his
11 questions before we go to the cross-examination.

12 So we'll swear Ms. Borkowski, do the direct,
13 and then we'll go to Commissioner Kenney for his questions,
14 and then we'll continue with cross-examinations and then come
15 back up to the bench for more questions. All right?

16 Ms. Borkowski, if you'd please raise your
17 hand.

18 (The witness was sworn.)

19 JUDGE WOODRUFF: You may inquire.

20 DIRECT EXAMINATION

21 QUESTIONS BY MR. LOWERY:

22 Q. Could you state your name for the record,
23 please.

24 A. Maureen A. Borkowski.

25 Q. And Ms. Borkowski, did you cause to be

1 prepared for filing in this docket two pieces of testimony,
2 surrebuttal testimony and supplemental surrebuttal testimony,
3 that have been marked for identification as Exhibits 5 and 6?

4 A. I did.

5 Q. If I were to ask you the same questions that
6 are posed in that testimony, would your answers here today be
7 the same?

8 A. Yes.

9 Q. And are those answers true and correct to the
10 best of your knowledge and belief?

11 A. Yes.

12 Q. Do you have any corrections or changes that
13 need to be made to those testimonies?

14 A. No, I do not.

15 MR. LOWERY: With that, Your Honor, I would
16 offer Exhibits 5 and 6 into the record and tender Ms.
17 Borkowski for cross-examination.

18 JUDGE WOODRUFF: All right. Five and 6 have
19 been offered. Any objections to their receipt? Hearing
20 none, they will be received.

21 (Exhibit Numbers 5 and 6 were received into
22 evidence.)

23 JUDGE WOODRUFF: As I previously indicated,
24 we'll go directly to Commissioner Kenney for questions.

25

1 CROSS-EXAMINATION

2 QUESTIONS BY COMMISSIONER KENNEY:

3 Q. Good morning.

4 A. Good morning.

5 Q. Can you hear me okay?

6 A. Yes.

7 Q. Thank you everybody in the room for
8 accommodating me, and I'll go through this relatively
9 quickly.10 Ms. Borkowski, I read your testimony, and I
11 just want to be clear about a few things. So you are CEO of
12 ATX and senior vice-president of Ameren Services, correct?

13 A. Yes.

14 Q. Okay. And the Ameren Corporation subsidiaries
15 that own transmission that participate in the MISO are Ameren
16 Missouri, Ameren Illinois, and ATX?

17 A. Actually --

18 Q. Or is -- ATX is not yet, right, because they
19 don't own anything yet?20 A. Ameren Transmission Company of Illinois is the
21 third transmission-owning member of MISO that's an Ameren
22 affiliate.23 Q. Okay. So Ameren Missouri, Ameren Transmission
24 of Illinois, and --

25 A. And Ameren Illinois Company.

1 Q. Those are the only three Ameren Corporation
2 subsidiaries that own transmission that participate in MISO?

3 A. Correct.

4 Q. Okay. So most of your testimony in addressing
5 OPC's and Staff's concerns about a conflict having Ameren
6 Services represent all of the entities in MISO focused
7 primarily on specifically transmission-owning issues.

8 Is that a fair characterization of your
9 testimony?

10 A. Yes. I believe Mr. Haro -- I'm sorry. I
11 believe Mr. Haro addressed the non-transmission-owning issues
12 with regard to Ameren representation at MISO.

13 Q. And I recall he talked a little bit about
14 before the mandatory forward capacity market, and I wanted to
15 ask you some of the questions, similar questions that I asked
16 Mr. Haro.

17 Were you involved at all in -- I mean
18 directly. I know Dennis Kremer participates on behalf of
19 Ameren Services in the stakeholder meetings at MISO, but were
20 you involved at all in the development of MISO's resource
21 adequacy construct?

22 A. Only to the extent that Mr. Kremer would brief
23 me, and we would discuss what was going on at MISO.

24 Q. Would you agree with me that, with respect to
25 a mandatory forward capacity market, the concerns that a

1 vertically integrated utility would have would be different
2 from the concerns that an unregulated or restructured utility
3 would have?

4 A. I think they would be different, but I think
5 there should still be concerns.

6 Q. I'm sorry, I didn't hear the last point. You
7 agree that they would be different, but --

8 A. I think they both have concerns. I think
9 that -- again, any entity, whether it's a vertically
10 integrated or a deregulated entity, should have concerns
11 about how a forward capacity market is constructed.

12 And in the case of the Ameren companies, our
13 concern is to make sure that there are reliable systems with
14 an efficient market.

15 Q. Reliable systems with efficient markets. And
16 is it your opinion that MISO's resource adequacy construct
17 fulfills that goal?

18 A. The current version is a step in that
19 direction. I think it's a positive step relative to where we
20 were with an energy-only marketplace. But I don't think at
21 this point in time, either from a reliability perspective or
22 from an efficient market perspective, that we're there yet.

23 I think that the Ameren position is that a
24 longer term market with -- and a really more transparent and
25 liquid market would probably be -- would better meet those

1 goals of reliability and efficiency.

2 Q. Can you explain to me how a longer term --
3 well, first of all, how much more long-term would the
4 resource adequacy construct need to be, the liability
5 component?

6 A. Well, I think the issue is that it should be
7 long enough that it sends appropriate price signals for
8 capacity planning and acquisition and capacity development.
9 So at this point in time, given that a lot of the new
10 resources that are expected to be developed are either gas
11 resources or demand resources or wind resources perhaps,
12 although right now those don't really contribute to the
13 summer peak much, that probably a three- to five-year
14 construct is appropriate.

15 Q. So would you agree with me, then, that the
16 primary goal of a long-term mandatory forward capacity market
17 is to incent new generation and, therefore, facilitate
18 reliability?

19 A. I think incenting new generation is one thing;
20 establishing a transparent market price is another. And from
21 my perspective as the balancing authority and transmission
22 operator, really the reason is to make sure that all of the
23 load-serving entities that participate in the marketplace,
24 particularly those that are included in the balancing
25 authorities we operate, make adequate plans for capacity, not

1 just for the coming summer, but for the future as well.

2 Q. So given what you just said, then, the current
3 resource adequacy construct that MISO filed would be wholly
4 inadequate because it's only one year and it's not going to
5 require all resources to bid into the market because it
6 allows for self-scheduling and opting out.

7 So would you agree with me, then, that the
8 current MISO proposal that's been filed would be wholly
9 inadequate to satisfy what you just described?

10 A. Well, as I said, I think it's a step in the
11 right direction and it's a good first step. The one positive
12 thing that it has contributed is that at least at this point
13 in time, every entity is accountable not only to their
14 balancing authority but also under the Midwest ISO tariff to
15 at least have adequate capacity for the coming year.

16 Prior to the resource adequacy construct that
17 we have today, it was unclear whether or not that requirement
18 existed for all load-serving entities, and if it -- if it
19 did, to what extent it could be enforced. So at least I
20 think what we have today is an improvement from a reliability
21 perspective.

22 It doesn't get us all the way there in terms
23 of, you know, having a transparent marketplace that sends
24 good price signals both for integrated resource planning
25 decisions and for incenting new capacity development.

1 Q. So it would be adequate to the extent that it
2 starts the ball moving in the right direction, but it's
3 incomplete to the extent that it doesn't -- it's not long
4 enough and it's not mandatory?

5 A. Well, I think it is. At least the first-year
6 part is now mandatory, so that's a good step. But yeah, I
7 would say again, we would certainly like to see it go
8 further.

9 Q. And -- and wanting to see it go further, is it
10 Ameren's objective and plan to help facilitate another filing
11 at some point down the road that would get -- that would
12 satisfy the other requirements that you described earlier?

13 A. Well, I don't know that I would characterize
14 it as facilitating another filing, but I think, with regard
15 to our representation at the Midwest ISO, that we do believe
16 that a longer term capacity construct would serve both
17 reliability interests and the development of the -- continued
18 development of efficient market.

19 Q. I guess what I'm getting at is if what we
20 just -- what we have now, what MISO has proposed, the one
21 year with the self-scheduling and the opting out, is adequate
22 to the extent that it's a good first step, that implies to me
23 that there must necessarily be additional steps somewhere
24 down the road to satisfy the other concerns that you
25 described.

1 And so what, if anything, does Ameren plan to
2 do to help move the ball down the road further?

3 A. I think we're continuing as we have in the
4 past to work with the other stakeholders in MISO and MISO
5 themselves in the appropriate forums to encourage the next
6 step to move forward.

7 Q. What's the next step to move forward?

8 A. To develop a longer term capacity construct in
9 order to achieve the reliability goals and a more efficient
10 power market.

11 Q. So what would that look like? Would it be
12 three to five years, and would it be a three- to five-year
13 mandatory forward capacity market with no opting out and no
14 self-scheduling?

15 A. No, I didn't go that far, and I think probably
16 Mr. Aurora would have probably been a better witness for this
17 than I, since I'm primarily looking at this from the
18 transmission and reliability perspective. But I do think a
19 three- to five-year construct would be preferable to what we
20 have today, and I do think that's the way you would get
21 appropriate price signals.

22 With regard to the self-scheduling and the
23 opt-out provisions, I don't know that that's -- I'm expert in
24 that area to know whether or not, you know, what the ins and
25 outs of that would be.

1 Q. Are you -- are you aware of any other markets
2 to which we could look for examples of whether capacity
3 markets, mandatory forward capacity markets have incented new
4 development -- have been successful in incenting new
5 development?

6 A. I think it would be difficult to come up with
7 examples today in this country. Again, I think other experts
8 at Ameren have even examined, you know, other nations, other
9 continents. But at this point in time, the mandatory
10 capacity markets are relatively new and, unfortunately, we're
11 at a point in time, due to the downturn in the economy, where
12 we have more capacity than we probably need.

13 So I don't know that I can point to specific
14 markets that have incented new capacity development at this
15 point in time.

16 Q. And would you agree with me that the reason --
17 I'm kind of summarizing what you just said -- for the reasons
18 that you just described, would you agree with me, then, the
19 reason you can't point to any examples is because they don't
20 exist?

21 A. No. I think what I'd say is the reason I
22 can't point to an example right now is that everyone's long
23 because of the economy. So when -- when the capacity markets
24 are long, you're not going to see a lot of new capacity
25 development.

1 Q. Okay. Given that fact, why would RTO or an
2 ISO develop a mandatory forward capacity market during a time
3 when everybody's long in capacity?

4 A. That's probably the best time because at that
5 point in time, you're not operating under pressure where
6 you've got to get something developed because if you don't,
7 the market will be short. So I think at this point in time,
8 you actually have the luxury to -- you know, to do the
9 studies and to understand the impacts of, you know, various
10 proposals and get something in place.

11 I mean, to me, that would be an advantage
12 rather than operating at a time when you're already short and
13 trying to quickly get something in place to address a
14 shortage.

15 Q. Okay. Would you agree with me, just as a
16 general proposition, that a more transparent and efficient
17 market would result in lower prices to retail ratepayers?

18 A. It probably -- I would say generally, yes.

19 Q. Are you aware of any studies that have looked
20 at existing forward capacity markets where the contrary has
21 been the case?

22 A. No, I'm not.

23 Q. Okay. Would you agree with me that, in terms
24 of ensuring adequate capacity for future years, that that's
25 the purview of state commissions in vertically integrated

1 markets?

2 A. I think some state commissions in the
3 vertically integrated markets certainly see that as their
4 role and have integrated resource planning rules to do that.
5 I don't think all states in vertically integrated markets
6 have integrated resource plans. Some of them leave that to
7 the discretion of their local utilities.

8 Q. To the extent that one of the goals of the
9 mandatory forward capacity market is to deal with what some
10 folks call the free rider problem, other people -- other
11 entities not properly planning, are there other methods by
12 which that issue could be dealt with other than mandatory
13 forward capacity markets?

14 A. I honestly don't know the answer to that
15 question in terms of what the realms of possibilities were.
16 I suppose some sort of national legislation or something like
17 that, but at the present time, the load-serving entities in
18 the Midwest ISO in particular are really a wide variety of
19 entities. There's cooperative systems, there's municipal
20 systems. There are some entities that are in deregulated
21 states so that the load-serving entities are like the retail
22 electric suppliers in Illinois.

23 You know, there are other entities that are
24 regulated but only serve load and then there are vertically
25 integrated. So there's an awful lot of different constructs

1 to have to deal with. Given that all of those entities --
2 the one thing they have in common right now is they're all
3 members of MISO. It would seem appropriate to deal with that
4 at the MISO level to make sure everyone was on a level
5 playing field.

6 Q. Okay. Do you perceive -- I'm trying to figure
7 out how to best word this question.

8 Ameren Illinois exists in a deregulated state
9 or a restructured state, correct?

10 A. Yes.

11 Q. And it owns generating capacity?

12 A. Ameren Illinois Company does not, no.

13 Q. Okay. What does -- and Ameren Illinois --
14 well, which entities in Illinois own generating capacity?

15 A. Dynegy owns generating capacity, Exelon has a
16 nuclear plant, Reliant and Ameren Energy Resources owns
17 generating capacity. There are others, I'm sure. I don't
18 recall -- well, now there are wind farms, of course.

19 Q. Right.

20 A. I don't recall off the top of my head all of
21 the entities that have generating capacity in Illinois.

22 Q. AER is the merchant generating arm of Ameren
23 Corporation?

24 A. Yes.

25 Q. Would you agree with me that the -- that a --

1 that the one-year -- well, strike that.

2 Would you agree with me that the three- to
3 five-year mandatory forward capacity market would be more
4 financially beneficial to Ameren Energy Resources than to
5 Ameren Missouri?

6 A. No, I don't think I would agree with that.

7 Q. How come?

8 A. Well, I haven't done an analysis to
9 demonstrate one way or the other, but I do think a forward
10 capacity market would certainly be beneficial to Ameren
11 Missouri from the standpoint that, you know, it has -- it's
12 long, so it has opportunity to sell.

13 So without doing a study, I don't know that I
14 could definitively say that.

15 Q. So in a circumstance where Ameren Missouri is
16 long on capacity, you would have opportunities to make
17 off-system sales that it doesn't already have?

18 A. At a capacity -- from a capacity standpoint,
19 yes, that could be the case.

20 Q. Okay. And let's assume that they weren't
21 long. Would your answer remain the same that, from a
22 financial standpoint, Ameren Missouri and Ameren Energy
23 Resources would be similarly or equally situated?

24 A. I don't know. I, obviously, think they would
25 both have an interest in there being a longer term forward

1 capacity market.

2 Q. Sure, sure.

3 A. I don't have any analysis to distinguish the
4 difference.

5 Q. They would have a similar interest in terms of
6 transparency and reliability and the other things that you
7 were talking about, but I'm thinking from a purely economic
8 standpoint from a bottom line profit motive, would Ameren
9 Energy Resources be more benefitted than Ameren Missouri?

10 A. Well, part of the reason it's difficult for me
11 to respond to that is I don't know enough about Ameren Energy
12 Resources's portfolio to know how much they have already sold
13 forward to other entities in the marketplace that actually
14 are looking to buy long-term capacity versus how much they
15 have not committed in a longer term capacity situation.

16 For example, one of the generators I neglected
17 to mention when I was listing other entities that owned
18 generation before was Prairie State --

19 Q. Uh-huh.

20 A. -- who's building a 1,650-megawatt coal plant.
21 One of those units has already been synchronized to the grid
22 and should be going commercial here fairly soon. They've
23 actually sold their capacity to a variety of different
24 municipal and co-op systems who were willing to make
25 long-term investment even in the absence of an integrated

1 resource plan.

2 So I don't know to what extent Ameren Energy
3 Resources might have engaged in similar kinds of activities.

4 Q. Okay. I just -- I just have a couple more
5 questions.

6 As I understand some of your testimony, Ameren
7 Missouri builds reliability projects, generation
8 interconnection projects and transmission services projects
9 that are necessary for Ameren Missouri, correct?

10 A. Could you repeat that, please?

11 Q. Sure.

12 A. The change of train of thought kind of threw
13 me for a minute.

14 Q. Ameren Missouri builds reliability projects,
15 generation interconnection projects and transmission service
16 projects that are necessary for Ameren Missouri's retail
17 load, correct?

18 A. Yes.

19 Q. And then MVPs and MEPs and generation
20 interconnection projects for customers other than Ameren
21 would be built by ATX?

22 A. Or one of its subsidiaries, that's correct.

23 Q. Or another subsidiary. And those are the
24 subsidiaries that we already discussed. ATX and --

25 A. Ameren Transmission Company of Illinois, for

1 example.

2 Q. Are there any others?

3 A. Not at the present time.

4 Q. Are there plans in -- a strategic plan
5 anywhere else to create any other transmission -- TransCos --
6 independent TransCos?

7 A. Our expectation was that there would be
8 subsidiaries under ATX that would own transmission and that
9 those might be organized by the state that they operate in.
10 They could also be organized by project, for example, if we
11 decided to, as ATX, develop a project like the Duke AEP
12 Pioneer project where we had a partnership.

13 So the idea would be that ATX would hold all
14 of the companies that actually were the transmission owners.

15 Q. Gotcha. Is that still the plan?

16 A. Yes, at the present time.

17 Q. Okay. So ATX or the other subsidiaries to be
18 named later would be building transmission projects that
19 would find its way into retail rates to the extent of the ten
20 percent or less regional allocation; is that correct?

21 A. Yes.

22 Q. Okay.

23 A. For some of those projects. ATX may also
24 engage in business outside of MISO, in which case Missouri
25 retail wouldn't be impacted.

1 COMMISSIONER KENNEY: Okay. That's all I
2 have. I hope that was relatively painless.

3 THE WITNESS: Thank you.

4 COMMISSIONER KENNEY: Thanks very much for
5 accommodating me.

6 JUDGE WOODRUFF: Thank you, Commissioner. All
7 right. We'll go back to take on cross-examination, then,
8 beginning with MISO?

9 MR. ZOBRIST: No questions.

10 JUDGE WOODRUFF: Staff?

11 MR. DOTTHEIM: No questions.

12 JUDGE WOODRUFF: MIEC?

13 MS. ILES: No questions.

14 JUDGE WOODRUFF: SPP?

15 MR. LINTON: No questions.

16 JUDGE WOODRUFF: Empire?

17 MR. COOPER: No questions.

18 JUDGE WOODRUFF: MJMEUC?

19 MR. HEALY: Just a couple.

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. HEALY:

22 Q. Ms. Borkowski --

23 COMMISSIONER KENNEY: I hope there's someone
24 else that has questions besides me so I don't feel bad here.

25 MR. HEALY: Don't worry, Commissioner. I'll

1 bail you out here.

2 COMMISSIONER KENNEY: Thank you.

3 BY MR. HEALY:

4 Q. Ms. Borkowski, how are you doing this morning?

5 A. I'm fine, thank you.

6 Q. I have just a few follow-up questions. Based
7 on your conversation with Commissioner Kenney, do you think
8 it's fair to say there's not much of a proven track record
9 when it comes to these capacity markets?

10 A. I don't think I could make that conclusion.

11 Q. Okay. Why not?

12 A. Because I think I indicated that I really
13 haven't done studies of the various markets, so I don't feel
14 comfortable drawing a conclusion like that.

15 Q. Okay. Would you agree, though, that they
16 haven't been around for more than ten years?

17 A. Again, I don't know that to be the case either
18 from the standpoint of other world markets and California.
19 I'm not sure of the timing of things like that.

20 Q. Okay. Limit it just to PJM and a New England
21 MISO, do you have any familiarity with those forward capacity
22 markets?

23 A. Very limited.

24 Q. Okay. Would you agree that they have not been
25 around for more than ten years?

1 A. I actually don't specifically know when they
2 started, so I would accept that if you represent to me that
3 that's true.

4 Q. If you don't know, that's fine.

5 Would you agree that, even without an
6 involuntary RAR market, new capacity is being built inside
7 MISO?

8 A. Could you please explain what "RAR" is.

9 Q. Resource adequacy requirements currently on
10 file.

11 A. Requirement, okay.

12 Q. Even without the forward capacity market as
13 proposed by MISO, would you agree that new capacity is being
14 built inside of MISO to serve existing needs?

15 A. Yes, I would agree that new capacity is being
16 built in MISO.

17 Q. Okay. Do you recall giving your deposition on
18 January the 18th, this year?

19 A. Yes.

20 Q. Okay. At that deposition, I asked you a
21 question, and would you -- do you have a copy of that in
22 front of you, by any chance?

23 A. Yes, I do.

24 Q. If you turn to page 91, please.

25 A. Okay.

1 Q You had stated that Ameren's transmission
2 policy was for safe, reliable service to customers. And you
3 agreed with me that was the goal of the Ameren Transmission
4 policy, correct?

5 A. Yes.

6 Q. And I asked you at that point, how does a
7 forward capacity market help that goal. Could you read your
8 answer back, please?

9 A. From our perspective, having a forward
10 capacity market ensures that every entity connected to the
11 system will be required to have sufficient resources both now
12 and planned for in the future to ensure the overall
13 reliability of the system.

14 Q. And when I asked you to give an example from a
15 traditionally regulated state on page 92, line 4, your answer
16 was you don't know specifically; is that correct?

17 A. That's correct.

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

19 JUDGE WOODRUFF: For Public Counsel?

20 MR. MILLS: Judge, I do have some questions,
21 and I've got a number of exhibits to mark.

22 JUDGE WOODRUFF: Okay.

23 MR. MILLS: I think it might be more efficient
24 just to go ahead and mark them all at once and then kind of
25 go through them one by one.

1 JUDGE WOODRUFF: That will be fine. Off the
2 record.

3 (Exhibit Numbers 19 through 23 were marked for
4 identification by the court reporter.)

5 MR. LOWERY: Your Honor, and this is my
6 oversight, but Exhibits 20, 21, and 22 should have been
7 marked highly confidential. They have -- they have
8 information about the future in them that I'm sure has not
9 been released generally to the public and creates SEC issues,
10 and so we need to treat those as highly confidential.

11 JUDGE WOODRUFF: Okay. That was 20, 21, and
12 22?

13 MR. LOWERY: That's correct. Twenty-three and
14 19 are not highly confidential.

15 JUDGE WOODRUFF: Mr. Mills, if we need to go
16 in-camera when we're talking about it, let me know.

17 MR. MILLS: Okay. Judge, I just had a brief
18 conversation with Mr. Lowery, and I believe that he's not
19 going to object to me just offering them all at once without
20 going through and laying a foundation one by one --

21 JUDGE WOODRUFF: Okay.

22 MR. MILLS: -- that these are responses that
23 Ms. Borkowski made.

24 JUDGE WOODRUFF: Okay.

25 MR. MILLS: So at this time, I'd like to offer

1 Exhibits 19 through 23.

2 JUDGE WOODRUFF: Nineteen was the EEI slide,
3 20-HC was the response to DR 2072, 21-HC is responsive to DR
4 2073, 22-HC is responsive to DR 2074, and 23 is response to
5 DR 2033. They've all been offered. Any objections to their
6 receipt? Hearing none, they will all be received.

7 (Exhibit Numbers 19 through 23 were received
8 into evidence by Judge Woodruff.)

9 MR. MILLS: Thank you.

10 CROSS-EXAMINATION

11 QUESTIONS BY MR. MILLS:

12 Q. Ms. Borkowski, could I get you to turn to the
13 second page of Exhibit 19, which is the colored map that
14 shows the graphical depiction of some transmission projects?

15 A. Yes.

16 Q. It looks to me as though the red line, which
17 is the Illinois Rivers project, connects to the orange line,
18 which is the Mark Twain project about several miles into
19 Missouri across the -- across the Missouri/Illinois state
20 border; is that correct?

21 A. On the map it appears that way. The
22 engineering has not been completed to know exactly what will
23 connect where. Basically, the -- the location represented on
24 the map where the orange and red lines come together is the
25 Palmyra substation, which is owned by Associated Electric.

1 Q. Okay. And so it's your testimony today that
2 it's not been determined where that connection will be?

3 A. As I said, the engineering hasn't been done,
4 so I don't know specifically what the nature of the
5 connection will be at the Palmyra substation.

6 Q. Can you turn to the copy of your deposition,
7 page 83.

8 A. I have it.

9 Q. And specifically, at lines 18 through -- I'm
10 sorry, 8 through 17, I asked you the question, Where is the
11 demarcation point between the Illinois Rivers project and the
12 Mark Twain project? Your answer was, The Palmyra substation.

13 And then my next question was, Okay. And
14 which entity will be responsible for building the portion of
15 the Illinois Rivers project that's geographically within
16 Missouri? And what was your answer to that question?

17 A. Ameren Transmission Company of Illinois.

18 Q. Okay. Was that correct at the time?

19 A. It's still correct.

20 Q. Okay. So the question that's still up in the
21 air is exactly where the demarcation point is?

22 A. Basically, what the -- how the engineering is
23 done at the substation in terms of how all the lines
24 integrate with the existing lines at the existing substation.

25 Q. Okay. So regardless of that sort of end point

1 for the portion of the line that runs from the
2 Missouri-Illinois border to somewhere at or around the
3 Palmyra substation, ATX Illinois will build that portion of
4 the line?

5 A. Yes.

6 Q. Okay. Now, for that plan to move forward, is
7 it -- is it necessary to know whether ATXI -- and I'll refer
8 to Ameren Transmission Corporation of Illinois as ATXI, if
9 that's all right with you.

10 A. That's fine.

11 Q. Is it important to know whether ATXI would
12 need a Certificate of Convenience and Necessity in Missouri
13 to build that portion of the line?

14 A. At such time as you proceeded there, yes, you
15 would need to know that.

16 Q. Okay. And from -- well, let me back up just a
17 little bit.

18 You are in charge of developing transmission
19 policy for ATX; is that correct?

20 A. Yes.

21 Q. And for ATXI as well?

22 A. Actually, transmission policy for all of the
23 Ameren transmission-owning subsidiaries.

24 Q. Okay. And in your role in developing
25 transmission policy, have you considered the question of

1 whether a company such as ATX or ATXI would need to have a
2 Certificate of Convenience and Necessity to build
3 transmission projects in Missouri?

4 A. Yes.

5 Q. And what is your -- what is your opinion on
6 that question?

7 MR. LOWERY: Objection to the extent it calls
8 for Ms. Borkowski to have a legal conclusion about what the
9 law does or does not require regarding CCNs.

10 MR. MILLS: And I understand that
11 Ms. Borkowski is not a lawyer, but she has to have some
12 understanding of this question in order to be able to decide
13 who builds projects where and under what circumstances.

14 MR. LOWERY: His question was, does she have
15 an opinion about whether ATXI needs a CCN. That's a
16 different question than the one he just posited.

17 MR. MILLS: That is the question I have is
18 what is her opinion about whether ATXI would need a CCN to
19 build this particular portion of the line.

20 MR. LOWERY: Her opinion is a legal
21 conclusion, which she's not qualified to give.

22 MR. MILLS: It's not a legal opinion. It has
23 to do with the question of whether or not the -- the plan
24 that she just laid out can move forward and under what
25 circumstances. And I'm not asking for her legal opinion.

1 JUDGE WOODRUFF: With that clarification, I'm
2 going to overrule the objection. You can answer the
3 question.

4 THE WITNESS: I am not an attorney, so I do
5 not know legally what the answer to that question is. It's
6 my understanding that that will -- some clarification will
7 have to come at a later date, but I don't know the answer
8 today.

9 BY MR. MILLS:

10 Q. Okay. And -- and you may recall, but when I
11 deposed you, you talked on a couple of occasions about that
12 clarification.

13 So in terms of setting policy, is it your
14 understanding that that is not a -- a clear-cut question?

15 A. I don't think I understand your question in
16 terms of setting policy.

17 Q. Well, in terms of the policy of who builds
18 transmission in what states and under what circumstances, is
19 it important for you to know whether or not a Certificate of
20 Convenience and Necessity would be required in particular
21 states for particular projects?

22 A. I don't think it's relevant to the
23 determination of our determination of who builds in what
24 state, no.

25 Q. Okay. So that's not a -- a -- a factor that

1 plays into your determination of determining who builds which
2 transmission projects in which state?

3 A. That's correct.

4 Q. Okay. Now, when you say clarification will
5 have to come on that question, is Ameren or ATX or ATXI, to
6 your knowledge, doing anything to seek clarification on that
7 question?

8 A. At the present time, no.

9 Q. Okay. Are there plans to do so?

10 MS. LOWERY: Object to the extent it calls for
11 any attorney-client privilege information.

12 MR. MILLS: I don't know whether it does or it
13 doesn't, so I can't respond to that objection.

14 JUDGE WOODRUFF: I guess I'll sustain the
15 objection as far as cautioning the witness, you don't need to
16 disclose attorney-client information, which is, I'm sure, the
17 purpose of the objection.

18 You can go ahead and answer the question as
19 best you can.

20 THE WITNESS: We do not have a specific plan
21 or schedule with regard to answering that question. We
22 understand that we will have to consult with our attorneys at
23 the time that that question becomes ripe.

24 BY MR. MILLS:

25 Q. Okay. And I know you weren't physically

1 present in the hearing yesterday, but do you -- do you know
2 or have you heard that Staff counsel, in their opening
3 statement, fairly emphatically made the point that the Staff
4 at least believes that a Certificate of Convenience and
5 Necessity is clearly necessary?

6 A. I'm aware of that, yes.

7 Q. And it's ATX's opinion that that is not as
8 clear-cut as Staff believes? Is that true?

9 A. I think it is within all of Ameren, not just
10 ATX, unclear what the -- what the law states at this point.

11 Q. Okay. Now, also with respect to the policy of
12 determining which entities will build which projects in which
13 state, is it important for Ameren to understand the revenue
14 streams that will come from those projects?

15 A. No, that was not a factor in the decision, no.

16 Q. Okay. So it's immaterial what revenue streams
17 come from the projects as to who will build them in which
18 states?

19 MR. LOWERY: Objection, asked and answered.

20 MR. MILLS: Okay.

21 JUDGE WOODRUFF: I'll overrule the objection.

22 You can give --

23 MR. MILLS: That's all right. If it's asked
24 and answered, I don't need to have another answer. I'll
25 withdraw the question.

1 BY MR. MILLS:

2 Q. Do you have a copy of your two pieces of
3 testimony that you filed in the case there with you?

4 A. I do.

5 Q. Okay. Can I get you to turn to your
6 surrebuttal testimony that was the -- the one filed in
7 November of 2011, and turn to page 7.

8 And that's actually a portion of an answer
9 that carries over from the previous page, but at the top of
10 page 7 beginning with the first complete sentence on page 7,
11 you're talking about Ameren Missouri's capital budgets,
12 correct?

13 A. Yes.

14 Q. And when you made the statement in your
15 testimony, did you know specific amounts over a five-year
16 planning horizon or a ten-year planning horizon that Ameren
17 Missouri, the investments needed to make in its distribution
18 system?

19 A. I had access to that information, yes. I had
20 seen their business plan. That does get updated
21 periodically. It's not a one-time decided, then it stays
22 constant forever kind of number.

23 Q. My question, though: Is at the time that you
24 wrote your testimony, did you know the numbers in terms of
25 any particular planning horizon, whether it's a five-year

1 planning horizon or a ten-year planning horizon, did you know
2 what the investments needed in the distribution system were?

3 A. I had seen the business plan, so I had -- yes,
4 I was aware of those numbers. I don't have them committed to
5 memory.

6 Q. Okay. So if I were to ask you what those
7 numbers are today, would you be able to answer?

8 A. No.

9 Q. Okay. And the same question for the
10 generation -- generating plants and transmission projects
11 that were referred to on line 3 of your testimony?

12 A. Same answer.

13 Q. And still on page 7 of your testimony on lines
14 9 and 10, you're talking about an increasing cost of capital
15 for Ameren Missouri, correct?

16 A. Yes.

17 Q. And did you do or have done on your behalf an
18 analysis that would support that statement about the
19 increasing cost of capital?

20 A. I did not do an analysis, no. But I think the
21 conclusion drawn there doesn't require an analysis.

22 Q. And so do you have any particular
23 quantification of the amount by which you believe that
24 Ameren's -- Ameren Missouri's cost of capital would increase?

25 A. No, I don't.

1 Q. Okay. If I can get you to flip forward in
2 that piece of testimony to page 11, specifically lines 18
3 through 19.

4 And you're talking about the other capital
5 needs of Ameren Missouri other than perhaps investing in MEP
6 or MEP projects, right?

7 A. Yes.

8 Q. And on line 18, you use the word "compromise."
9 Can you define for me what you mean by "compromise" in that
10 sentence?

11 A. I believe we covered this in my deposition as
12 well. Probably not the best choice of words, but basically,
13 it -- the possibility that investing capital in the regional
14 projects which were not required to meet Ameren Missouri's
15 obligation to serve its same load could potentially put at
16 risk or jeopardize other capital investments that it did need
17 to make to serve its native load, those being generation
18 projects, environmental projects, distribution projects, or
19 transmission that was needed for reliability purposes.

20 So I think probably "compromise" means put at
21 risk or put in jeopardy.

22 Q. Okay. I'm going to hold on just a second to
23 see if we're --

24 JUDGE WOODRUFF: I think we lost
25 Commissioner -- or Chairman Gunn, so I hung it up and see if

1 he'll call back, so --

2 MR. MILLS: Should I stop or continue?

3 JUDGE WOODRUFF: Continue.

4 MR. MILLS: Okay.

5 BY MR. MILLS:

6 Q. And with respect to the --

7 JUDGE WOODRUFF: There he is.

8 CHAIRMAN GUNN: Yes, I'm sorry. I got cut
9 off, I apologize.

10 BY MR. MILLS:

11 Q. And with respect to this notion that regional
12 projects may put in jeopardy other capital needs, did you --
13 did you or anyone on your behalf solicit any opinions from
14 rating agencies on the -- on whether or not these regional
15 projects would, in fact, jeopardize other capital needs?

16 A. No, we didn't seek out opinions from rating
17 agencies, but again, Ameren Missouri reflected in their own
18 business plan that they felt that increasingly taking on
19 capital needs --

20 MR. MILLS: Judge, can I get the instruction
21 to the witness to simply answer the questions that have been
22 posed? My question was only about whether they sought
23 opinions of rating agencies and not what they did internally.

24 JUDGE WOODRUFF: All right.

25 MR. MILLS: I believe she answered that

1 question.

2 JUDGE WOODRUFF: As I'm sure you're aware,
3 just answer the questions that are asked and don't elaborate.

4 THE WITNESS: Okay. Thank you.

5 JUDGE WOODRUFF: Thank you.

6 BY MR. MILLS:

7 Q. Do you have a copy of Exhibit 21-HC in front
8 of you?

9 A. Yes.

10 Q. And I'm going to ask a couple of questions
11 about this, but I don't believe it will go to any highly
12 confidential information. The response to -- this is the
13 response to data request 2073, and it indicates that the
14 draft business plan that was provided in response to DR 2007
15 was provided to the Board, and I assume that -- does that
16 mean the Ameren Board of Directors?

17 A. Yes.

18 Q. Okay. And I believe in your deposition, you
19 stated that it had not been presented to the Board.

20 A. That's correct. I misspoke in my deposition.
21 The presentation that I made in this attached PowerPoint was
22 the information that I participated in, in -- before the
23 Board of Directors. There's also a packet of information
24 that goes out to the Board prior to the Board meetings, and
25 the transmission business plan was included in there.

1 Q. Okay.

2 A. So I misspoke in my deposition.

3 Q. And has the material in either the draft
4 business plan or the PowerPoint that is Exhibit 21-HC been
5 provided to the Ameren Missouri Board?

6 A. I don't specifically know who the Ameren
7 Missouri Board members are. To the extent that they include
8 members of the executive leadership team, yes, they would
9 have seen that same information.

10 Q. In your role as setting transmission policy
11 for Ameren Corporation and all the subsidiaries, how do you
12 interface with Ameren Missouri to understand what their needs
13 are?

14 A. Well, we actually determine what the needs are
15 from the standpoint of with regard to transmission, my group
16 does the planning for the corporation's load-serving entities
17 across both Missouri and Illinois. So within our group,
18 we're the ones that determine to what extent with changing
19 load growth, changing dispatch patterns and, you know,
20 changes in reliability rules or planning criteria what
21 transmission is required in order for Ameren Missouri to meet
22 its obligations to serve native load.

23 Now, we do confer with Ameren Missouri,
24 particularly when it gets to the budget impacts of that,
25 because obviously those dollars are included in their budget.

1 So we define what the projects are, we work with Ameren
2 Missouri personnel to develop the cost estimates, as well as
3 with other Ameren Services personnel, and then those projects
4 are reflected in their budgets.

5 Q. Okay. Thank you. Do you have a copy of
6 Mr. Kind's testimony with you?

7 A. I do not.

8 Q. Okay. Do you have a copy of the -- of the
9 draft business plan with you?

10 A. I do not.

11 MR. MILLS: Okay. Judge, may I approach?

12 JUDGE WOODRUFF: You may.

13 THE WITNESS: Thank you.

14 BY MR. MILLS:

15 Q. Ms. Borkowski, I've handed you a copy of the
16 rebuttal -- I'm sorry, surrebuttal testimony of Ryan Kind to
17 which is attached a copy of the ATX draft business plan.

18 Are you familiar with that draft business
19 plan?

20 A. Yes.

21 MR. MILLS: And I believe that this is
22 confidential, so Judge, I'd like to go in-camera to ask a
23 couple questions about this.

24 JUDGE WOODRUFF: Okay.

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1 MR. MILLS: In fact, Judge, that's all the
2 questions I have.

3 JUDGE WOODRUFF: Okay. Then we'll come up for
4 questions from the bench. Chairman Gunn?

5 CHAIRMAN GUNN: I don't have any questions.

6 JUDGE WOODRUFF: Okay. Commissioner Jarrett?

7 EXAMINATION

8 QUESTIONS BY COMMISSIONER JARRETT:

9 Q. Good morning, Ms. Borkowski. How are you
10 doing?

11 A. Good morning. I'm fine, thank you,
12 Commissioner.

13 Q. I'd love to ask you some questions, but I
14 think between Commissioner Kenney and Mr. Healy and
15 Mr. Mills, I think all of my questions have been answered, so
16 thank you for being here today.

17 A. You're welcome.

18 JUDGE WOODRUFF: Okay. There were no
19 questions from the bench, so no need for recross. Any
20 redirect?

21 MR. LOWERY: Not much, but a little bit.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MR. LOWERY:

24 Q. Ms. Borkowski, you were just discussing a
25 draft ATX business plan with Mr. Mills. Does that draft

1 business plan reflect how ATX is organized and structured?

2 A. No.

3 Q. How about that business plan and its
4 relationship to how ATX is being operated, does it reflect
5 the operations of ATX?

6 A. No, it doesn't. We've implemented it in a way
7 different than what's stated in the business plan.

8 Q. Now, you were mistaken, you said, about
9 whether the business plan was given to the Board of
10 Directors, correct?

11 A. That's correct, in my deposition.

12 Q. Right. And you've corrected that in a DR
13 answer since then, correct?

14 A. Yes.

15 Q. When you went to the Board and when this plan
16 was given to the Board, was -- was there a particular agenda
17 item on the Board agenda for determination at that Board
18 meeting?

19 A. I don't recall if it was specifically listed
20 as an agenda, but the purpose of the presentation was for the
21 Board to approve the formation of Ameren Transmission
22 Company.

23 Q. Was the purpose to approve the business plan?

24 A. No, not specifically.

25 Q. Okay. Mr. Mills asked you a question about

1 whether or not you or Ameren Missouri or I guess probably
2 another Ameren entity has sought a rating agency opinion
3 regarding Ameren Missouri's capital needs in relationship to
4 building regional projects versus generation, distribution,
5 et cetera. Do you remember that?

6 A. Yes.

7 Q. And you started to, I think, explain why
8 that -- that such an opinion from the rating agencies has not
9 been sought.

10 Can you tell the Commission why that is so,
11 why that was not sought?

12 A. Well, we didn't see the specific need to seek
13 an opinion from the rating agency because I think, as a
14 common business knowledge, there's an understanding that a
15 regulated entity has limited amounts of capital that it can
16 spend. And that to the extent that it continues to expend
17 amounts of capital beyond that which the rating agencies feel
18 comfortable with relative to their cash flow, that it will
19 affect your credit ratings.

20 So Ameren Missouri, as a part of their
21 business plan development, has for some time been carefully
22 scrutinizing their capital expenditures to see -- to ensure
23 that they aren't putting downward pressure on their own
24 credit ratings, yet are still able to meet the requirements
25 to meet their service obligations to their native load.

1 So the ability to have Ameren Transmission
2 Company or one of its subsidiaries make the transmission
3 investment in regional projects would actually improve the
4 situation for Ameren Missouri. You have to understand that
5 if Ameren Missouri were to build a transmission project, it
6 wouldn't have the flexibility of scrutinizing those projects
7 for possible, you know, deferral or elimination like it might
8 be able to postpone some distribution projects because, under
9 the MISO transmission owner's agreement, those projects have
10 to be built. So they rise to the top of the stack in terms
11 of priorities.

12 That's what I meant by jeopardizing the
13 ability of Ameren Missouri to make the other investments that
14 are needed. If there's a limited amount of capital and
15 regional transmission investments would rise to the top of
16 the stack, then that means something else gets pushed out the
17 bottom, and those remaining projects would either be
18 generation, environmental, or distribution projects. We
19 didn't believe that was in the best interest of the Missouri
20 customers.

21 Q. Do you have an opinion about whether or not
22 these regional projects that would get pushed to the top of
23 the stack, as you say, whether or not they are as essential
24 as the other kinds of projects you were talking about to
25 actually serving load?

1 A. These projects are not justified on the basis
2 that they're needed for reliability or necessary to provide
3 service to load. In fact, their very name, the multivalue
4 projects, indicates that they have a broader array of
5 benefits than just being required to serve native load
6 customers.

7 Q. Do you know what Ameren Missouri's Moody's
8 issue or rating is -- issue or credit rating is at this time?
9 If you don't, that's fine.

10 A. I don't, I'm sorry.

11 Q. Fair enough. Mr. Healy asked you some
12 questions about -- I think he asked you whether you agree
13 that capacity was being built in the MISO footprint despite
14 the fact that today there's not a mandatory capacity market.
15 Do you remember that?

16 A. Yes.

17 Q. And I think you might have been asked some
18 questions by Commissioner Kenney as well along those lines.
19 Do you -- and I know you were asked some questions by
20 Commissioner Kenney about the free rider issue.

21 Do you know of examples within the MISO
22 footprint in recent times where you've seen a free rider
23 problem?

24 A. Yes. As a matter of fact, in 2009 we had an
25 experience where, as the balancing authority and transmission

1 operator, every year going into the summer season, we
2 accumulate information from all the various retail electric
3 suppliers and other load-serving entities like the co-ops and
4 the munis in Illinois to make sure that we have adequate
5 capacity to be able to meet our peak load requirements.

6 And in accumulating all the information we got
7 from the entities in terms of what capacity resources they
8 had available to serve our load, the total accumulation of
9 resources was only 8,100 megawatts, approximately, for a peak
10 load forecast of 9,000 megawatts. So based on not having any
11 kind of enforceable requirement, the load-serving entities
12 were coming up ten percent short of the peak, much less any
13 reserve margin.

14 Now, in that particular instance, we actually
15 went back to each individual load-serving entity and informed
16 them as to what we believed their share of the load forecast
17 should be with the -- a required reserve margin and
18 essentially required them to go and acquire more capacity
19 resources.

20 We were a little bit troubled because we were
21 concerned that we may not have had any enforcement authority
22 if anybody balked. So having a requirement in the MISO
23 market, even if it is just an annual requirement, at least
24 addresses that part of the reliability issue so we won't have
25 to face that again.

1 MR. MILLS: March 9th and March 23rd?

2 JUDGE WOODRUFF: Yes. So initial briefs on
3 March 9th, reply briefs on March 23rd, and I'll put out a
4 notice to that.

5 Anything else we need to take up? All right.
6 Then we're adjourned.

7 (End of Proceedings Held on 2/10/12.)

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)

) ss:

COUNTY OF GASCONADE)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1108, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Court Reporter

I N D E X

AMEREN MISSOURI'S EVIDENCE

MAUREEN BORKOWSKI:

Direct Examination by Mr. Lowery	274
Examination by Commissioner Kenney	276
Cross-Examination by Mr. Healy	291
Cross-Examination by Mr. Mills	296
Examination by Commissioner Jarrett	318
Redirect Examination by Mr. Lowery	318

EXHIBIT INDEX

	MARKED	RCV'D
1		
2		
3	*	275
4		
5	*	275
6		
7	295	296
8		
	295	296
9		
10	295	296
11		
	295	296
12		
13	295	296
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

*-marked in Volume 3